

September 3, 2003

Re: Tallassee Waste Disposal Center Expansion/ Impact on the Ashurst Bar/ Smith Community

To Whom It May Concern:


Please accept this as an effort on my part to continue to inform of the environmental travesty that the local governing body (The Tallapoosa County Commission) has participated in creating for this small rural community in East Tallassee, Alabama.

As a result of a public hearing for comments on August 26, 2003, that was nothing more than a formality, are additional comments and concerns that I submitted to the Alabama Department of Environmental Management (ADEM) for inclusion in the record. Please be mindful that this meeting was the first opportunity granted to the people who are directly impacted by this landfill to seek answers to their concerns.

To be poor and Black does not mean that a people should not have due process in decisions that effect their health, safety, property, and overall well being.

The people of the Ashurst Bar/Smith Community have been in opposition to the operation of this landfill since it was sited in the neighborhood since 1970. Therefore, because it is now being expanded and proposed to be expanded to a total of 200 acres in the most populated part of the community we are seeking leadership and intervention from all aspects of our Government to address the concerns that are and have been ignored by our local, state regulatory agency, and other elected officials.

The concern or effort given to the issues that are within your realm of authority would be greatly appreciated.



RECEIVED

9/11/2003 MJ

ER-03-RW

[REDACTED]
[REDACTED]
[REDACTED]

Mr. James Warr, Director
ADEM
P.O. Box 301463
Montgomery, Al 36130-1463

Re: Public Hearing for Permit 62-11 Modification and Expansion of the Tallassee Waste Disposal Center Landfill

Dear Mr. Warr,

As a landowner and a product of the Ashurst Bar/Smith Community I am taking this opportunity to thank ADEM for fulfilling the requirement to grant a public hearing. The attorney presiding over the meeting conducted it in a most professional manner and the public did so as well based on the ground rules set forth for the process.

The following are comments and concerns that I am submitting for the placement in the records:

1. The card registration was a hindrance to participants entering into the meeting room. It established a long line outside of the door while the meeting was being conducted. The personal information requested on the card was intimidating and prevented some from speaking out of fear. The public assumed that they could rise, give their names, and proceed with their statements or ask questions.
2. The public was informed that this was not a question and answer session, but instead comments on solid waste issues and they had to be limited to 5 minutes.
3. The public was told that the comments and/or SCOPE would be limited to technical issues, and specifically that socio-economic issues were outside of ADEM'S SCOPE but were to be evaluated by the local authority none of whom were available to address these critical issues at the Public Hearing. Out of a community like the Ashurst/Bar community how many scientist do you think live there or could pay someone to represent them on technical issues? Even more so ADEM representatives decided not to discuss technical issues. Without dialogue there is no discovery or resolution.
4. There appears to be a discrepancy about the acreage included in this request for expansion and modification between ADEM and the US Corp of Engineers.
5. Why is the sedimentation pond being moved and exactly where is it being located?
6. Prior to the reopening of this land fill in April 2002 it was the site of an unlined landfill that turned up with the presence of toluene in a local drinking spring 600

feet south of the perimeter of the boundary, what measures are in place to protect the community from the continued possibility of these safety hazards?

7. The expansion of this landfill as documented by the maps supplied by the US Corp of Engineers includes property purchased on the opposite side of Washington Boulevard, which will border the Local Church and the most populated area in the community. This is a rural community and many people still use well water. Where is the documentation that impact studies were done to protect these sources of water for these people?
8. What is the impact of water run-off on to adjacent property owners south and to the east of this site and to the west after expansion on to the opposite side of Washington Boulevard?
9. The community is concerned about wind patterns since this landfill is within a one to two and a half mile radius of the most populated area or in the case of Mr. Horace Geter in his back yard.
10. Entry of the landfill traffic is limited to entering from highway 49, but instead it has been reported that the traffic is entering from other directions. Has this previous permit specification been revised?
11. We are concerned about the setbacks of homes on the roads. Many of the residencies are very close to the roads.
12. Washington Boulevard and Ashurst Bar roads are very narrow two lane rural community roads that are not designed to handle eighteen-wheeler trucks and the continued increase in the number of garbage trucks. The roads are very curvaceous and have several snake pattern curves with homes situated near them. We are concerned about "the level of service/accident ratings."
13. We are concerned about the traffic by workers who are coming into the neighborhood to pick up their trucks and the subsequent movement of the trucks on to the roads during the hours our children are loading and dismounting the school buses.
14. We are concerned about the lack of traffic signs throughout the community indicating the speed limit, school bus loading, and children playing.
15. We are concerned about surface water and foliage used by the wild life in the area, and the impact this will have on our hunting capabilities.
16. With the close proximity of the landfill to the most populated area we are concerned about the transmission of diseases by rodents, insects and other wild life including wild dogs that are exposed to hazardous or other unsafe waste that these animals are exposed to since, a request was made by the owner to use a tarp instead of dirt cover except once a week.
17. We are concerned about the wetlands, the natural occurring springs, and the impact this landfill is having on the environmental natural balance in this part of our state.
18. We are concerned about the impact of the landfill on our farmers' animals and the gardens that people use for food.

19. Since the reopening of the Tallassee Waste Disposal center in April 2002 there has been numerous non-compliance reports of high methane gas levels. We are concerned that the community was not notified and to date there is not in place a mechanism to alert the community of such dangers. It is indeed the responsibility of every governmental agency including the owner, the local government, ADEM, the State of Alabama Health Department, EPA and whom ever else that has enforcement authority to guarantee the safety of its citizens from such potential danger and it surely should inform the people of a situation that has their lives and property at risk.
20. There are no fire hydrants from the entrance of Washington Boulevard to the site.
21. We are concerned that this site was ever permitted as suitable based on (a) the moisture problem, (b). a natural gas line, (c). the close proximity to the most populated area, (d). the site is accessed by two (2) very narrow two-lane highways (Highway 49 and Washington Boulevard). Both of these roads were designed for local residential traffic and not large commercial trucks.
22. We are concerned about the lack of emergency equipment, (ambulances, fire trucks, etc.).
23. We are concerned about the lack of an evacuation and decontamination plan.
24. We are concerned about the total disregard of our local church by situating a landfill near by and also the proposed design to relocate Washington Boulevard closer to its site.
25. We are concerned about the impact on the Tuscaloosa aquifer that is in the area.
26. We are concerned about the Gleeden Branch and other streams that leave the area and merge with larger bodies of water, which eventually empty into the Alabama River, specifically of water sources of other municipalities down stream.
27. We are concerned that the owner is being granted such a large service area and such wide latitude of waste types it can accept.
28. We are concerned about the displacement of landowners currently four (4), since the required boundary of a landfill owner is 200 or fewer feet.
29. We are concerned about the placement of the large garbage containers on the newly acquired Lanear property to the south of the existing landfill since in a letter dated May 2003 stated that this " 80 acre parcel was being withdrawn form the permit and modification request". Additionally since this parcel of property is separated from the existing landfill by a natural gas line we are concerned how the existing landfill will be merged with this property. We are concerned that an access road to a piece of private property south of the existing land fill was fenced off and included in the Lanear property, requiring the property owner to get a key from the owner to open a gate to enter their property.
30. We are concerned as to whether the Tallapoosa County Commission (the local authority) submitted a detailed analysis addressing the six minimum siting factors as set out in the Alabama Solid Waste Disposal Act (ASWDA) and ADEMS implementing regulations when selecting the Ashurst/Bar/Smith/Community as the

site for The Tallassee Waste Disposal Center. In as much were alternate sites considered by the Tallapoosa County Commission in selecting a site to consider for the waste for this area. Additionally in that the site was closed for lack of space and available land for expansion is it documented that the Commission weighed this issue in granting approval of the 2002 reopening of the landfill?

31. We are concerned as to whether a need based analysis was done with statistics to support that the 90 % African American Community of the Ashurst Bar/ Community should overwhelmingly bare the burden for the benefit of 74% of the communities served which are majority white. In view of the articles in the local paper concerning the litigation between Sunflower Inc. and Waste Management concerning the collecting of trash in Montgomery and Elmore Counties it appears that the need for an expansion is not supported by statistics generated by the integration of a statewide network of facilities that aid in the planning, development, and operation of facilities.
32. We are concerned that the Tallapoosa County Commission and ADEM have approved 4 out 5 landfills in majority African-American communities and this is in violation of Title VI and is blatant racial discrimination. In reopening the Tallassee Waste Disposal Center, if the proper criteria was used by the local authority the site should have been eliminated and even more so further scrutinized by ADEM for compliance since the Tallapoosa County Commissioners were already in violation of Title VI. Tallapoosa County is a majority white county why is the African-American population bearing the burden for waste disposal in this county? The continued failure of the Commission to comply with Title VI in preventing a disparate impact on majority African –American communities (protected communities by EPA Part 7 regulation) only concerns us more that ADEM the recipient of Federal Funds are not performing its duties as overseers for legal implementation of the laws of this land.
33. We are concerned about the devaluation of our properties and the social and community perception, even though there have been disparaging comments made in regards to the way the property owners maintain their properties.
34. We are concerned that in spite of the recent investigative report submitted by The U.S. Environmental Protection Agency Office of the Civil Rights, in June 2003 to ADEM in regards to the TITLE VI ADMINISTRATIVE COMPLAINT FILE NO. 28R-99-R4, that the attorney opened the meeting by stating that ADEM only considers technical issues and not socio-economic impact issues. As you are well aware this report found that ADEM is not limited or prohibited by any legislative act from exerting its authority to oversee that local bodies, consider safety and socio-economic impacts, but also ADEM should, “ undertake additional and independent analyses of such impacts during the State permitting phase for a facility if necessary.” In this report EPA found that ASWD Act, “gives ADEM broad authority to manage and regulate all aspects of solid waste disposal in Alabama.” It is the EPA’s position that the ASWD Act, “directs ADEM, in developing the State Solid Waste Management Plan to ensure that all aspects of local, regional, and state planning, zoning, population estimates, and economics are take into consideration.” You should note that the files available at ADEM concerning the Tallassee Waste

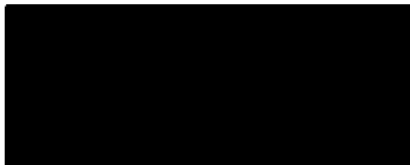
Disposal Center includes pictures of abandon homes, rather than the homes within the 2 ½ mile radius surrounding the landfill.

In conclusion there were many issues that were not addressed because of the format of the hearing, and the lack of the public to participate by questions to really ascertain valid information to determine why the Ashurst/Bar/Smith Community was chosen as a site when clearly there are natural and population issues that should have sent up questions to ADEM when the owner began making application for a landfill in this protected community. The Tallassee Waste Disposal Center's proposed permit has received strong community opposition due to the racial and environmental disparities related to it. Despite this opposition, ADEM as failed to provide the Ashurst Bar/Smith Community with adequate opportunities to participate in the decision-making process related to the proposed permit. This procedural failure by ADEM violates Title VI. As much ADEM's August 26, 2003 Public hearing was neither early, inclusive, or meaningful for the Ashurst Bar/Smith Community based on the issues, procedures and concerns listed earlier.

According to EPA, it is possible to violate Title VI or EPA's Title VI regulations based solely on discrimination in the procedural aspects of the environmental decision-making process. USEPA, Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, Federal Register / Vol .65, No. 124 / Tuesday, June 27, 2000,39658. Early, inclusive, and meaningful public involvement in the environmental decision-making process is recommended for compliance with Title VI.

It is most disappointing to think that the governmental agency charged to protect the well being of the citizens of the State of Alabama, had knowledge of the June 2003 EPA report and its recommendations, but still chose to announce its ability to consider issues in the permitting process to its perceived limited scope.

Please enter this letter into the comment report.



cc: Mr. Jonathan Crosby

Alabama State Health Department

U.S. Environmental Protection Agency Office of Civil Rights

U.S. Corp of Engineers, Mobile District


U.S Department of Transportation

The Alabama Department of Transportation

Governor Bob Riley

Alabama Attorney General
The U. S. Justice Department
Janette Wipper
Senator Richard Shelby




December 8, 2003

United States Environmental Protection Agency
Office of Civil Rights
Mail Code 1201 A
1200 Pennsylvania Ave. NW
Washington, DC 20460

Attn: Karen D. Higginbotham, Director

Re: Tallassee Waste Disposal Center, Inc./ Sunflower, Inc.
East Tallassee Alabama, Tallapoosa County
Permit 62-11
EPA OCR file No. 06R-03-R4

Dear Ms. Higginbotham,

The purpose of this letter is to inform the EPA of the decision by the Alabama Department of Environmental Management (ADEM) to issue the permit for modification of the Tallassee Waste Disposal Center. I received notification via a letter dated October 20, 2003. Included with the notice of approval were responses to comments made during the August 26, 2003 public hearing and also additional written comments submitted for inclusion in the record due by the August 29, 2003 deadline. A copy of this letter is enclosed.

I submitted to EPA a copy of my written comments to ADEM dated August 29, 2003, and I have been notified an investigation will be conducted to review the comments for acceptance as an administrative complaint.

For the purpose of background, the existence of this landfill began in the 1980's. Prior to the August 26, 2003 date the people of this community were never granted a public hearing in spite of ongoing public protests and complaints. It is our contention that this hearing was neither early, inclusive, or of substantive value since the process for the expansion/modification reached ADEM as early as March 2003. (See March 14, 2003 letter) As an adjacent landowner I received my first information concerning this expansion June 9, 2003 and was given until July 9, 2003 to respond and prepare. This written notice was the first time I was informed of any activity concerning the Tallassee Waste Disposal Center. It was of little value because a preliminary determination of renewal application was written June 5, 2003 (letter enclosed).

ADEM's response to comment 3 in the public hearing report that, "EPA has found no direct evidence of intentional discrimination in its investigation of ADEM's permitting process for municipal solid waste landfills", does not address the concerns of the people

of the Ashurst Bar/Smith Community by its continued refusal to address the recommendations listed in the June 2003 EPA investigative report. To be clear we are concerned that based on this EPA report ADEM should "undertake additional and independent analyses of such impacts during the states permitting phase for a facility if necessary". It is our contention that because of the many complaints from the community of the local authority's failure to conduct the site evaluations according to recommended site factors; ADEM should have conducted an independent analysis and submitted to the community its findings on socio-economics, population estimates, safety, and other health impact issues. Specifically, ADEM's acknowledgement that The Alabama Solid Wastes Disposal Act required the local authority (Tallapoosa County) to document its consideration of the site factors is what we were seeking to support our concern as to whether this was done.

In the many years that the citizens of the Ashurst Bar/ Smith Community have protested and pursued inclusion to participate in the policy making decisions in the locating or re-opening of the landfill in our community a satisfactory response has not been granted to support any effort by the governing authorities to allow our involvement. As evidence of the local authority's policy to ignore, in the event of this most recent modification request the local authority did not notify the community of the decision to authorize the relocation of a public road. I am particular concerned about the procedures of the local authority since the road's proposed design will go through the middle of my property, which is a violation of my rights to have due process in regards to the State seizing my land.

I am appalled at the continuing attitude and disregard of ADEM toward the recommendations in the investigative report of the US PROTECTION AGENCY OFFICE OF CIVIL RIGHTS FOR TITLE VI ADMINISTRATIVE COMPLAINT FILE NO. 28R-99-R4, YERKWOOD LAND FILL COMPLAINT JUNE 2003. Not only were the opening statements at the August 26, 2003 public hearing contrary to the report, this interpretation of limited scope to technical issues continues in the written October 2003 report as well.

Such blatant disregard of these recommendations warrants asking when and how the environmental policies mandated by our Federal Government are going to be enforced at the state and local level in Alabama? ADEM cites the Georgia case (Rozar v. Mullis, 85 F.3d 556) to justify its position, even though the EPA reports supporting documentation was not supplied in a previous request. Is it EPA's position to allow this trivialization or indifference to policy recommendations that protect the citizens of this country? What reasons contribute to the difference in what EPA interprets as the governing authority of ADEM and what this regulatory agency subscribes as its scope and functions?

It appears site has everything to do with landfill permitting, yet the agency charged to be the ultimate implementer of Alabama environmental policies will not assume responsibility for this very critical factor.

Due to ADEM's lack of involvement in site selection, the Tallapoosa County Commission has allowed four out of five landfills to be situated in majority African-American communities. Tallapoosa County is a majority White county, yet the African-American population is overwhelmingly bearing the burden of having landfills placed in their neighborhoods. (See [REDACTED] report) It is on this premise that we allege specific targeting of African-American Communities by landfill owners in Tallapoosa County and the failure of the Tallapoosa County Commission to properly utilize the siting factors required by EPA to make sure that a disparate situation is not caused. Based on the June 2003 report of EPA to ADEM, this agency is also in violation of Title VI, because in the absence of an adequate siting process the ultimate responsibility for compliance rests with ADEM.

Another point of concern is whether or not ADEM was completely honest and forthright with the information supplied to the citizens of the Ashurst Bar/Smith Community. The early documents listed the project as a major modification permission request (see letter dated April 30, 2003 ECE to Jonathan Crosby at ADEM). The US Corp of Engineers notice dated June 13, 2003 Public notice No. A103-0181-R Public notice to fill in wetlands to expand the use capabilities of the Tallassee Waste Disposal Center included property outside the existing permitted area. (See the Corp's Notice) The documents referred to the facility as 200 plus acres yet in other places it is listed as 120 plus acres, therefore confusing the community as to the size of the facility and the area included. Clearly the maps provided by the Corp included the relocation of Washington Blvd, the new boundaries bordering the local Church and the most populated area in the community. Wetlands were to be addressed by the Corp, yet in the ADEM's comment report we were told that the wetlands were approved August 2002 and were in the permitted area. Furthermore if the initial proposed work was changed a clarification notice should have been addressed to the adjacent property owners specifically identifying the property involved and the work to be done.

Although technical issues, such as continuous abnormal methane gas levels for the entire first year of the reopening, water run-off (compliance issues), the possible contamination of Gleeden Branch, the trespass of industrial chemicals which traversed the southern boundary of the landfill to contaminate a drinking water spring, the close proximity of the landfill to the natural gas line, inadequate roads through a rural neighborhood, the LOCATION of the new sedimentation pond, and the concern about the Tuscaloosa Aquifer were addressed to ADEM, these issues were not addressed in the comment report. So, it is not that ADEM does not address socio-economic issues, the agency apparently does not address any of the concerns raised by the people who are adversely impacted.

In summary, my complaint is that the public hearing was a formality and not of any substance since the only statement by ADEM was the opening statement that addressed its perceived limited scope to technical issues only, nor early when in fact a preliminary letter had been issued in June 2003. Additionally, ADEM's intention seems to be of non-compliance to the recommendations issued in the EPA June 2003 report. It leads me to

surmise that ADEM continues to ignore EPA's interpretation of the Alabama Solid Waste Act as not being as restrictive as the agency claims.

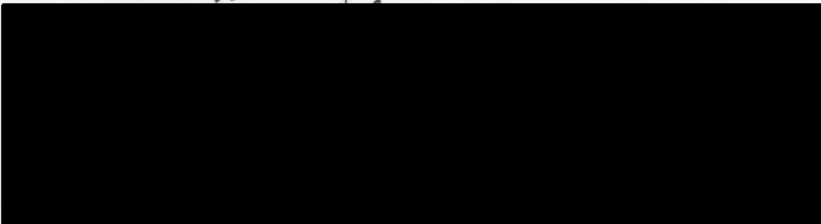
It is troubling that this governmental agency that receives tax funds and is charged to insure the well being and health of the citizens of this state is resorting to ignoring mandated policies in regards to maintaining a safe and healthy environment for its fellow citizens. In Tallapoosa County the African- American Communities should not overwhelmingly bare the waste disposal burden for the county. More specifically the Ashurst Bar/Smith Community is baring the burden for the 74 % majority White communities serviced out of the 19 counties by the Tallasse Waste Disposal center. It is not by accident that the Ashurst Bar/Smith Community was chosen, for it is an identified pattern by the Commissioners of Tallapoosa County to select sites in poor Black communities.

The overall impact of this landfill is the creation of a living environment that is inhumane which will continue the displacement of people and the ultimately loss of the land owned by African-Americans since the 1800's. Politicians grant permits for industries to locate in low income communities that cause environmental concerns and injustice issues on the premise that economic gains will be received by the communities affected. The Ashurst Bar/Smith Community has not received any financial or economic benefits from the Tallasse Waste Disposal Center. The workers are majority White and are from outside of the community and county. Therefore strengthening our charge of being left out of all aspects of this project.


The question more importantly is who will enforce TITLE VI or Executive Order 12,898, Federal Legislations passed to protect targeted groups of citizens such as the population of the Ashurst Bar/Smith Community in Tallapoosa County, Alabama against disparate situations when there is overwhelmingly evidence of disregard and discrimination?

Thanks in advance.

Sincerely, /



cc: Sen. Richard Shelby
Sen. Jeff Sessions
Rep. Mike Rogers

Rep. Artur Davis
Governor Bob Riley
Al. Sen. Hank Sanders
Al. Rep. Ted Little
Al. Rep. Betty Carol Graham
Al. Rep. Yusuf Salaam
U.S. Justice Department




RE: Information Request Re: ADEM's Process for Permitting Landfills

Davis, Phil to: Karen Randolph

05/21/2010 04:35 PM

Karen:

Please understand that ADEM's Solid Waste Landfill permitting process strictly follows the technical and administrative requirements placed upon it by the applicable State laws and regulations. Specifically, the State Solid Waste statute clearly defines the roles and responsibilities of both the Department and local governments as related to approval of solid waste disposal facilities. The Department has not and will not take steps to contradict nor overstep the authority granted to it by the Alabama Legislature based on recommendations made by EPA. It should also be noted that ADEM's RCRA Subtitle D program meets or exceeds the requirements of the federal regulations.

As for the referenced recommendations made in Phase II of the 1991 State Solid Waste Management Plan (SWMP), it should be pointed out that the State SWMP has revised and the new version was adopted in 2008. Since this document is required to be promulgated as a regulation, this revised SWMP eliminated all "recommendations" and instead includes a number of specific, tangible measures for the enhancement of solid waste management within the State. Chief among these was actions was the passage and ultimate implementation of the Solid Wastes and Recyclable Materials Management Act of 2008.

Phillip D. Davis, P.E.
Chief, Solid Waste Branch
ADEM - Land Division
334/271-7755 (phone)
334/239-6450 (cell)
334/279-3050 (fax)
pdd@adem.state.al.us

-----Original Message-----

From: Randolph.Karen@epamail.epa.gov [mailto:Randolph.Karen@epamail.epa.gov]
Sent: Thursday, May 20, 2010 2:51 PM
To: Davis, Phil
Subject: Information Request Re: ADEM's Process for Permitting Landfills

Hello Again Phil,

Not sure if you remember, but back on July 1, 2003, EPA completed an investigation report (complaint 28R-99-R4) for a complaint filed in December 1999, alleging discrimination regarding the manner in which ADEM implements its regulations for issuing and modifying permits for four municipal solid waste landfills (Cedar Hill, New Georgia, Florence, and Pineview) in Alabama. The complaint also alleged adverse and disparate impacts on the African Americans in the host communities of these landfills. Although the complaint was dismissed based on no findings of discrimination, EPA's report recommended that ADEM take certain actions (see below) regarding siting factors to ensure that safety and socio-economic impacts are considered when permitting landfills in the future, and to prevent violations of EPA's Part 7 regulations.

Please let me know if ADEM has considered or begun implementing any of these recommendations when permitting landfills in Alabama. If ADEM has begun implementing any of these recommendations, please elaborate on the actions taken by ADEM, in terms of how these recommendations have been implemented. If ADEM has not implemented any of these recommendations, but has take other actions to ensure that siting factors are considered when permitting landfills, please discuss those actions as well.

The recommendations listed in EPA's July 1, 2003 dismissal letter include:

- ADEM should require that local governing bodies submit to ADEM, along with their local approval of solid waste landfill permit applications, detailed analyses of the six minimum siting factors (as set out in the State's Solid Wastes Disposal Act and ADEM's implementing regulations) that were considered by the local body in connection with the site-specific permit;

- Where a local body's analyses of six minimum siting factors is not sufficient (as determined by ADEM) or not done, ADEM should undertake its own consideration of these factors during its permitting of a municipal solid waste landfill;

- ADEM should put in place a program to oversee local government implementation of local solid waste management plans; and

- ADEM should implement its own "recommendations" as contained within Phase II of the State's Solid Wastes Management Plan.

Feel free to call me if you have any questions or would like to discuss. Thanks.

Karen

Karen Randolph
U.S. Environmental Protection Agency
Washington, DC 20460
(202) 343-9679

From: Karen Randolph/DC/USEPA/US
To: "Davis, Phil" <PDD@adem.state.al.us>
Date: 05/13/2010 08:07 AM
Subject: Re: FW: New Georgia Landfill Inspections

Hello Phil,

So good talking to you again. Thanks so much for the quick turn around on this.
Take care.

Karen

Karen Randolph
U.S. Environmental Protection Agency
Washington, DC 20460
(202) 343-9679

From: "Davis, Phil" <PDD@adem.state.al.us>
To: Karen Randolph/DC/USEPA/US@EPA
Date: 05/12/2010 04:54 PM
Subject: FW: New Georgia Landfill Inspections

Karen:

It was a pleasure speaking to you earlier this afternoon. Attached you will find copies of the Solid Waste inspections conducted at the New Georgia LF since the MSW cell was approved to begin accepting waste in April 2009. Also, please note that the Solid Waste Branch has received no complaints concerning the operation of this facility since it went into operation last year.

Please let me know if you have any additional questions.

Phillip D. Davis, P.E.

Chief, Solid Waste Branch

ADEM - Land Division

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pdd@adem.state.al.us

From: Brown, Linda C
Sent: Wednesday, May 12, 2010 3:27 PM
To: Davis, Phil
Subject: New Georgia Landfill Inspections

Since the municipal cell was certified on April 10, 2009, the Solid Waste Branch has conducted four inspections on the following dates:

April 23, 2009

August 6, 2009

December 4, 2009

February 26, 2010

No violations were noted.

The Solid Waste Branch has not received any complaints for this facility.

Linda C. Brown

Environmental Scientist

Enforcement & Remediation Section

Solid Waste Branch

(334) 279-3069

(334) 279-3050 (fax)

lcbrown@adem.state.al.us

[attachment "01777 37-11 073 20091204 COMP INSP RPT.pdf" deleted by Karen Randolph/DC/USEPA/US] [attachment "01777 37-11 073 20100226 COMP INSP RPT.pdf" deleted by Karen Randolph/DC/USEPA/US] [attachment "01777 37-11 073 20090423 COMP INSP RPT.pdf" deleted by Karen Randolph/DC/USEPA/US] [attachment "01777 37-11 073 20090806 COMP INSP RPT.pdf" deleted by Karen Randolph/DC/USEPA/US]

11/30/2011

The Alabama Department of Environmental Management (ADEM) received your e-mail dated October 28, 2011, regarding the Department's actions during the 2003 permitting of a modification to the Tallassee Waste Disposal Center Landfill in Tallapoosa County, Alabama. Below, the Department attempts to clarify certain points raised regarding the letter dated February 26, 2007, which initially provided information regarding the above referenced complaint:

Question #1

Based on the Joint Public Notice, US Corps of Engineers and the State of Alabama, Department of Environmental Management, Proposed Placement of Fill in Wetlands to Expand the Use and Capabilities of the Tallassee Waste Disposal Center, Tallapoosa County, Alabama, dated June 13, 2003 and the Solid Waste Public Notice for the modification of Tallassee Waste Disposal Center, dated July 7, 2003, is the total acreage of the Tallassee Waste Disposal Center (TWDC) property about 200 acres, and does the TWDC facility takes up 123.47 acres of the 200 acres?

Response to Question #1

First, it is noted that the two public notices reference information related to two different permitting/certification actions which involve two different parcels of land.

The first notice, dated June 13, 2003, was a joint public notice issued by the U.S. Army Corps of Engineers regarding a §404 permit for the proposed placement of fill in a wetlands which would allow expansion of the non-waste disposal capabilities of the TWDC and the required water quality certification proposed to be issued by ADEM. This §404 permit was for a 200 acre parcel of land owned by TWDC, but was not included as a part of the proposed solid waste permit modification. Since only non-disposal activities would take place on this property, this area is not included as part of the solid waste disposal permit.

The second notice, dated July 17, 2003, was ADEM's notice of a proposed modification the solid waste disposal permit for the landfill. The permitted facility area for the landfill remained 123.47 acres. The proposed modification involved the addition of 5.11 acres for municipal solid waste and 6.56 acres for construction and demolition waste within the previously approved 123.47 acres.

In summary, both properties are owned by TWDC, however, the 200 acre parcel is not included as part of the 123.47 acre Solid Waste Disposal Facility currently permitted by the Department.

Question #2

On the first page, "C" refers to a copy of the public notice dated June 17, 2003 issued by ADEM. Exhibit C is a copy of the 422 Public Hearing Notice Dated July 17, 2003. Is this a typo and should Exhibit be the Public Notice – 422, Tallassee Waste Disposal Center Landfill dated June 5, 2003, and not the public hearing notice?

Response to Question #2

This is a typo; the Department was referring to the July 17, 2003 public hearing notice.

Question #3

Did any Ashurst/Bar –Smith community members submit written comments before or after the public hearing was held?

Response to Question #3

Attached is a copy of the comment letter submitted to the Department prior to the hearing.

Question #4

Why did TWDC need a different permit to fill in wetlands in 2003 (See Joint Notice in No. 1 above) if the Corps had already given them a permit to fill in wetlands on August 22, 2002? Or is this for a different set of wetlands.

Response to Question #4

This is a different set of wetlands. The August 22, 2002 §404 U.S. Corp of Engineers permit was to fill in 1.16 acres of wetlands within the 123.47 acre permitted solid waste facility boundary. Conversely, the June 13, 2003 joint public notice issued by the U.S. Army Corps of Engineers regarding a §404 permit was to fill in wetlands on a 200 acre parcel of land owned by TWDC, but not included as a part of the proposed solid waste permit since only non-disposal activities would take place on this adjacent property.

June 26, 2003

Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130
ATTN: Mr. Jonathan Crosby

ADEM-P&S
2003 JUL 10 PM 1 41

RE: Permit #62-11

To Whom It May Concern,

I am a resident, landowner, adjacent landowner, heir or concerned citizen of the Ashurst Bar/Smith Community, the community where Tallassee Waste Disposal Inc., (Sunflower Landfill) is proposing a permit modification. I am writing to express my opposition to the landfill's existence and any further expansion of the landfill for the following reasons:

- First, there are concerns about the health and welfare of the citizens in this established community. Many residents of this community have ties to the area since the 1800s. **The proposed modification and the proximity of this site will pose a threat to a greater number and more concentrated area of residents, approximately 20 dwellings.**
- The proposed modification allows for an increased daily volume of waste, which will contribute to an increased nuisance to the community with additional trucks and traffic flow. Although the Tallapoosa County Commission reworked Washington Blvd. in 2001, many residents are concerned that this road is still too narrow for landfill-related trucks and equipment traveling through this community. There are concerns that any additional traffic will only add to an already unsafe situation and further jeopardize the safety of residents, motorists and pedestrians.
- Why is there a need for a modification to the landfill's sediment pond? If a modification is needed, have there been impacts which have already occurred to the soil and water?
- Regarding impacts to water, residents of the community have raised concerns regarding watershed issues throughout the history of the landfill and continue to have concerns regarding the landfill's impact to an area which is plentiful in wetlands. The residents continue to be concerned about impacts to Gleen Branch and its tributaries all along the landfill, which lead into the Euphaphée Creek, the Tallapoosa River, the Alabama River and ultimately the Gulf.
- With the modification and its proximity, there are also concerns about potential impacts to the Ashurst Creek.
- There are concerns about the proximity of the modification site and the "proposed relocation road." This appears to bring traffic closer to a **greater number of residents, as well as the local church which has been located on this same property for over 100 years.**
- There are concerns about the proposed modification and the proximity of the landfill to a natural gas line and the potential for disaster, particularly if there were a methane gas problem. There is already a lack of fire hydrants in this community.
- Additionally, in the event of a disaster, there are concerns about a disaster/evacuation/remediation plan. As it stands now, residents have no such knowledge of any type plan or procedures to follow.

This information is being submitted for the record concerning the granting of the permit modification but also to request and substantiate a request for a public hearing.

Thank you.

Name

Address

(b) (6)

(b) (6)

(b) (6)



Jonathan Crosby (ADEM) mark up for which
response applied to what
comments.

62-11

see 01/17/12
email from
JC to KCA

June 26, 2003

Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130
ATTN: Mr. Jonathan Crosby

ADEM-P&S

2003 JUL 10 PM 1 41

RE: Permit #62-11

To Whom It May Concern,

I am a resident landowner adjacent landowner heir or concerned citizen of the Ashurst Bar/Smith Community, the community where Tallassee Waste Disposal Inc., (Sunflower Landfill) is proposing a permit modification. I am writing to express my opposition to the landfill's existence and any further expansion of the landfill for the following reasons:

- First, there are concerns about the health and welfare of the citizens in this established community. Many residents of this community have ties to the area since the 1800s. The proposed modification and the proximity of this site will pose a threat to a greater number and more concentrated area of residents, approximately 20 dwellings. *Comment 7, Local Approval*
- The proposed modification allows for an increased daily volume of waste, which will contribute to an increased nuisance to the community with additional trucks and traffic flow. Although the Tallapoosa County Commission reworked Washington Blvd. in 2001, many residents are concerned that this road is still too narrow for landfill-related trucks and equipment traveling through this community. There are concerns that any additional traffic will only add to an already unsafe situation and further jeopardize the safety of residents, motorists and pedestrians. *Comment 5, Comment 1*
- Why is there a need for a modification to the landfill's sediment pond? If a modification is needed, have there been impacts which have already occurred to the soil and water? *Comment 10*
- Regarding impacts to water, residents of the community have raised concerns regarding watershed issues throughout the history of the landfill and continue to have concerns regarding the landfill's impact to an area which is plentiful in wetlands. The residents continue to be concerned about impacts to Gleeden Branch and its tributaries all along the landfill, which lead into the Euphaphée Creek, the Tallapoosa River, the Alabama River and ultimately the Gulf. *Comment 6, Water Division, Corp*
- With the modification and its proximity, there are also concerns about potential impacts to the Ashurst Creek. *Water Division, Corp of Engineers*
- There are concerns about the proximity of the modification site and the "proposed relocation road." This appears to bring traffic closer to a greater number of residents, as well as the local church which has been located on this same property for over 100 years. *Comment 1*
- There are concerns about the proposed modification and the proximity of the landfill to a natural gas line and the potential for disaster, particularly if there were a methane gas problem. There is already a lack of fire hydrants in this community. *Local Approval, Comment 1*
- Additionally, in the event of a disaster, there are concerns about a disaster/evacuation/remediation plan. As it stands now, residents have no such knowledge of any type plan or procedures to follow. *Comment 1*

This information is being submitted for the record concerning the granting of the permit modification but also to request and substantiate a request for a public hearing.

Thank you.

Name

Address

(b) (6)





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 30, 2016

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #: 7015 1520 0002 0019 2304

In Reply Refer to:

EPA File Nos: 06R-03-R4,
12R-13-R4, and 13R-16-R4

Mr. Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36130-1463

Re: Request for Information, EPA File Nos. 06R-03-R4, 12R-13-R4, and 13R-16-R4

Dear Mr. LeFleur:

The U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is requesting information to facilitate the investigations of several allegations concerning the Alabama Department of Environmental Management (ADEM). OCR is currently investigating complaint file nos. 06R-03-R4 (Tallassee¹), 12R-13-R4 (Arrowhead Landfill), and 13R-16-R4 (Dothan Sanitary Landfill). In addition to investigating the environmental and health impacts arising from the issuance of permits or permit modifications in these cases, OCR is investigating whether ADEM is complying with the procedural safeguard provisions of 40 C.F.R. Part 7 Subpart D which require recipients of EPA financial assistance to have specific policies and procedures in place to comply with their affirmative non-discrimination obligations.²

OCR recognizes that ADEM has made information publicly available on its website; however, OCR needs additional information in order to investigate the accepted allegations. Pursuant to its authority under 40 C.F.R. § 7.115, OCR requests ADEM to provide the information and documents outlined in the enclosed attachment (Enclosure 1) within thirty (30) **calendar days** of receipt of this letter. Please provide any other information that ADEM would like EPA to consider while investigating the allegations in these complaints. For your convenience, ADEM may provide electronic versions of the requested responses and documents.

Please review and follow the enclosed instructions (Enclosure 2) prior to responding to the questions set forth in Enclosure 1. Failure to provide the information required by this letter may result in one or more of the actions outlined in 40 C.F.R. § 7.130, including referral to the Department of Justice. *See*

¹ The Tallassee Waste Disposal Center is currently known as the Stone's Throw Landfill, but for consistency with the name when the complaint was filed, OCR is referring to this as Tallassee.

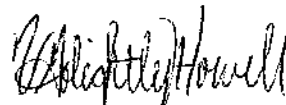
² Acceptance of Administrative Complaint no. 13R-16-R4 from Velveta Golightly-Howell, Director of OCR, EPA to Director Lance R. LeFleur, ADEM. (February 24, 2016).

also, Department of Justice, Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes, September 1998, section V(D)(3)(c).

After OCR's review of the information ADEM provides, OCR may request additional information and/or documents, so please preserve all electronic communications and other documents that may be relevant to the investigations. Please be sure to provide the name and telephone number of the individual who compiled the information in response to this Information Request, and the name and telephone number of the individual to whom OCR should direct any future questions.

If you have any questions, please feel free to contact Lilian Dorka, OCR's Deputy Director at 202-564-9649, by email at dorka.lilian@epa.gov or U.S. mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460-1000. Thank you in advance for your cooperation.

Sincerely,



Velveta Golightly-Howell
Director
Office of Civil Rights

Enclosures: 1 - Questions
2 - Instructions

cc: Elise Packard
Assistant General Counsel
Civil Rights and Finance Law Office

Kenneth LaPierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 4

Naima Halim Chestnut
Office of Policy & Management
U.S. EPA Region 4

Nancy Tommelleo
Deputy Regional Counsel
Office of Regional Counsel
U.S. EPA Regional 4

Enclosure 1

EPA File No. 06R-03-R4

EPA File No. 12R-13-R4

EPA File No. 13R-16-R4

Information Request to ADEM

Provide the following information using the instructions included as Enclosure 2. A response must be sent to the EPA within thirty (30) calendar days of ADEM's receipt of this request for information letter. However, if there is a specific question(s) that you believe will require additional time for response please contact us immediately to discuss and we can arrange a different time frame.

- 1) Please confirm whether ADEM has designated at least one Non-Discrimination Coordinator to ensure ADEM's compliance with Title VI, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).

If ADEM's response is "yes", please identify this individual's name, title, and contact information and describe how ADEM ensures its Non-Discrimination Coordinator:

- a. Provides information to individuals regarding their right to services, aids, benefits, and participation in any ADEM program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination, as well as notice of ADEM's formal and informal grievance processes and the ability to file a discrimination complaint with ADEM.
- b. Establishes grievance policies and procedures or mechanisms (*e.g.*, an investigation manual) to ensure that all discrimination complaints filed with ADEM under federal non-discrimination statutes are processed promptly and appropriately.
- c. Ensures the tracking of all discrimination complaints filed with ADEM under federal non-discrimination statutes including any patterns or systemic problems.
- d. Conducts a semiannual review of all formal and informal discrimination complaints filed with the ADEM Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by ADEM in order to identify and address any patterns or systemic problems.
- e. Informs and advises ADEM staff regarding ADEM's obligations to comply with federal non-discrimination statutes and serve as a resource on such issues.
- f. Ensures that complainants are updated on the progress of their discrimination complaints filed with ADEM under federal non-discrimination statutes and are promptly informed as to any determinations made.

- g. Periodically evaluates the efficacy of ADEM's efforts to provide services, aids, benefits, and participation in any ADEM program or activity without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination.
 - h. Ensures appropriate training in the formal and informal processes available to resolve complaints filed under federal non-discrimination statutes.
 - i. Provides or procures appropriate services to ensure ADEM employees are appropriately trained on ADEM non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.
- 2) We understand that ADEM has posted its notice of non-discrimination on the ADEM website.³ Please confirm whether ADEM currently posts its notice of non-discrimination in any other general publications that are distributed to the public. Please explain whether the notice of non-discrimination includes the following:
 - a. ADEM's responsibilities for coordination of compliance efforts and whether they respond to inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.
 - b. Contact information for the Non-Discrimination Coordinator to respond to any questions about this notice or any of ADEM's non-discrimination programs, policies or procedures.
- 3) What is ADEM's process for providing grievance procedures to the public? How is the public informed of this process?
- 4) Please confirm whether ADEM ensures that its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes are published in print in general publications distributed to the public. Please confirm whether the grievance procedures at a minimum address the following:
 - a. Who may file a complaint under the procedures;
 - b. Which processes are available, and the options for complainants in pursuing either;
 - c. That an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted;
 - d. That the preponderance of the evidence standards will be applied during the analysis of the complaint;

³ 40 C.F. R. § 7.95 (a).

- e. Assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if it occurs:
 - f. That written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.
- 5) Please confirm and describe ADEM's process for providing public involvement to potentially affected and affected communities regardless of race, color, national origin (including limited-English proficiency), age, disability, and sex. Additionally, please state whether ADEM's public participation process/procedures includes the following:
- a. An overview of ADEM's plan of action for addressing the community's needs and concerns;
 - b. A description of the community (including demographics, history, and background);
 - c. A contact list of ADEM's officials with phone numbers and email addresses to allow the public to communicate via phone or internet;
 - d. A list of past and present community concerns and how those concerns were answered (including any Title VI complaints or complaints relating to any of the other federal non-discrimination statutes enforced by EPA);
 - e. A detailed plan of action (outreach activities);
 - f. A contingency plan for unexpected events;
 - g. Location(s) where public meetings will be held (consider the availability and schedules of public transportation);
 - h. Contact names for obtaining language assistance services for limited-English proficient persons, including, translation of documents and/or interpreters for meetings;
 - i. Appropriate local media contacts (based on the culture and linguistic needs of the community); and
 - j. Providing the public with location/s of information repository/ies.
- 6) Please submit a copy of the processes, policies, and/or procedures by which ADEM provides access to its services and programs for individuals with disabilities. Additionally, if ADEM does not have a written policy in place, please note that in your response.

If ADEM does not have a standing documented policy for providing access to its services and programs for individuals with disabilities, please describe in detail any decision making process

utilized for providing such services. Answer the questions below and then provide any other information that OCR may find useful:

- a. How does ADEM ensure that ADEM facilities and non-ADEM facilities utilized by ADEM (i.e., if ADEM holds a public hearing at a school, etc.) are physically accessible for individuals with disabilities?
 - b. How does ADEM make communities it serves aware that services for individuals with disabilities are available?
 - c. Are live proceedings such as town hall meetings or public hearings simultaneously interpreted into sign language? If so, what hearings? Who conducts the sign language interpretation? What are the sign language interpreters' qualifications?
 - d. How are resources for these disability accommodation services allocated?
 - e. How does ADEM determine which disability accommodation services are needed for ADEM sponsored public events?
- 7) Please provide a copy of the processes, policies, and/or procedures by which you provide access to ADEM's services and programs for individuals with limited English proficiency (LEP). Additionally, if ADEM does not have a written policy in place, please note that in your response.

If ADEM does not have a standing documented policy for providing access to ADEM's services and programs for individuals with limited English proficiency (LEP), please describe in detail any decision-making process utilized for providing such services. Answer the questions below and then provide any other LEP-related information that OCR may find useful:

- a. How does ADEM you make communities it serves aware that foreign language services are available?
 - b. Are any standardized documents translated? If so, what documents and into what languages? Who were they translated by? What are the translators' qualifications?
 - c. Are live proceedings such as town hall meetings or public hearings simultaneously orally interpreted into other languages? If so, what hearings and into what languages? Who conducts the interpretation? What are their qualifications?
 - d. How are resources for these services allocated?
 - e. How is it decided who receives foreign language services?
- 8) Please describe how ADEM monitors and oversees compliance efforts and responds to inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the

Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

- 9) Please provide, excluding employment discrimination complaints, copies of any race, color, or national origin discrimination complaints raised since 2003 through ADEM's grievance procedures that are required by EPA's Non Discrimination regulations for programs or activities receiving EPA assistance and ADEM's subsequent response to those complaints.
- 10) Has ADEM received any complaints or comments since 2003 through the permitting process or other avenues regarding the effects or impacts of the modification of Solid Waste Disposal Facility Permit No. 35-06 and the authorization of the City of Dothan to expand the City of Dothan Sanitary Landfill regarding the adverse and disparate impacts on African American residents in the surrounding community.
 - i. If so, provide copies of any records documenting the concern or comments raised and copies of ADEM's responses to each concern or comment raised.
- 11) Has ADEM ever conducted, procured, received or requested an analysis regarding any adverse or disparate impacts of the expansion of the Dothan and / or Tallassee Landfills on the African American community that is in the surrounding area? If so, please provide a copy of the analysis or analyses.
- 12) Has ADEM reviewed, analyzed, evaluated or altered permit or monitoring conditions based on any studies or analyses regarding any effects or impacts, including health effects, in regards to the Dothan, Arrowhead, and Tallassee landfills? If so, please provide a copy of any reports or memoranda prepared regarding those reviews. Please also provide a description of any actions taken by ADEM in response to information contained in those studies or analyses.
- 13) Has ADEM received any complaints about the drinking and surface water in the community surrounding the Arrowhead Landfill since June 2013? Has anyone requested or recommended that ADEM test the drinking water, including well water and the drinking water provided through the public water system, and surface water for potential contamination and/or runoff from the Landfill since June 2013? If so, please provide copies of such complaints and/or requests and a description of ADEM's actions in response to the complaints and/or requests.
- 14) Has ADEM performed any surface water or drinking water tests, publically or privately supplied, surrounding the Arrowhead Landfill since June 2013? If so, please provide the documentation relating to the surface and/or drinking water analysis and identify any action taken by ADEM in response to the analysis.
- 15) During a meeting with the EPA's Office of Civil Rights and Office of General Counsel on February 2, 2016, ADEM officials indicated that while its grievance procedure was not posted on its website or otherwise publicized that any member of the public who called ADEM's Title VI Coordinator would be directed to an internal document that described the grievance procedure. However, on February 5, 2016, witnesses testified before the United States Commission on Civil Rights. One witness indicated that they requested for ADEM to provide them with any documentation regarding their nondiscrimination compliance program.

The witness stated that ADEM's response was "[i]t is the Department's practice to comply with all Federal and State statutes, including Title VI. There are no documents that conform to those requested in your Public Records Request."⁴

Please provide the following from 2004 to present day:

- a) A copy of any internal memo that contains ADEM's nondiscrimination policies and/or grievance procedures.
- b) Information, data or documentation that supports ADEM's description of the effectiveness of its grievance procedures for discrimination complaints.
- c) Relevant information that responds to or rebuts the statements by members of the public about ADEM's grievance procedures for discrimination complaints.
- d) Any logs, records or documentation: 1) identifying members of the public who called or wrote about claims of discrimination; 2) what information was requested, including information about ADEM's grievance procedures; and 3) what information ADEM provided.

If no documentation is kept regarding public contact, describe what process ADEM developed to ensure that information about its grievance procedures for discrimination complaints is shared with the public.

- e) Describe how ADEM periodically evaluates whether the Title VI Coordinator is effective in providing the public information about its grievance procedures for discrimination complaints.

⁴ Statement of David A. Ludder, Esq. U.S. Commission on Civil Rights Briefing: Environmental Justice: Toxic Materials, Poor Economics, and the Impact of the Environment on Low-Income, Minority Communities. (February 5, 2016).

Enclosure 2

INFORMATION REQUEST

INSTRUCTIONS

Each of the following instructions applies to each and every question contained in the letter.

1. ADEM must provide a written response to each request for information, even if such a response is a statement reflecting that no responsive information or documents exist. Each response should be preceded by the number and content of the question being answered.
2. If ADEM's response to a particular question requires a scanned or hard copy document, ADEM must identify the filename or document title. Make sure to correlate any hardcopy or scanned documents to a specific question. If a document is responsive to more than one question, this must be so indicated and only one copy of the document needs to be provided.
3. ADEM may choose to either submit documents in .pdf format or as hard copy documents. However, electronic submissions are preferred. Should ADEM choose to provide .pdf electronic documents, do not create separate .pdf files for each page of a single document. Files publicly available online must be downloaded and submitted either in .pdf format or in hard copy. Files submitted must be those utilized in ADEM's decision-making process, not later drafts.
4. Identify each person whom ADEM relied on or consulted with in preparing its responses to each question of this information request. Provide the individuals' names, titles, job duties and duration of employment with ADEM. If they are not an employee of ADEM, identify their employer and provide their names, title, job duties and duration of employment with their employer.
5. Identify each document consulted, examined, or referred to in the preparation of ADEM's response or that contains information responsive to the question, and provide a true and correct copy of each such document if not provided in response to another specific question. Indicate on each document produced in response to this information request the number of the question to which it corresponds.
6. If requested information or documents are not known or are not available to ADEM at the time of ADEM's response to this information request, but later become known or available to ADEM, ADEM must supplement ADEM's response to the EPA within thirty (30) **calendar days** of discovery of the responsive information. However, if there is a specific question(s) that you believe will require additional time for response please contact us immediately to discuss and we can arrange a different time frame. Moreover, should ADEM find at any time after submission of ADEM's response that any portion is or becomes false, incomplete or misrepresents the facts, ADEM must provide the EPA with a corrected response as soon as possible.
7. Provide a separate response to each and every question, and each and every subpart of a question.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 28, 2017

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 5645
Marianne Engelman Lado
Visiting Clinical Professor of Law
Yale Law School
127 Wall Street
New Haven, Connecticut 06511

In Reply Refer to:

EPA File No. 06R-03-R4

Certified Mail #: 7015 3010 0001 1267 5652
Leah Aden
Senior Counsel
NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street
5th Floor
New York, New York 10006

Re: Closure of Administrative Complaint, EPA File No. 06R-03-R4

Dear Ms. Lado and Ms. Aden:

This letter is to notify you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving and closing, as of the date of this letter, the administrative complaint filed by your clients with EPA on December 8, 2003, against the Alabama Department of Environmental Management (ADEM). The complaint generally alleged that ADEM violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d et seq. (Title VI) and the EPA's nondiscrimination regulation found at 40 Code of Federal Regulations (C.F.R.) Part 7. With respect to the specific issues addressed in this case, EPA ECRCO finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation.

EPA ECRCO is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex, and age in programs or activities that receive federal financial assistance from the EPA. On September 7, 2005, EPA accepted for investigation two allegations

raised in the December 2003 complaint.¹ On January 25, 2013, EPA issued a letter dismissing one of those allegations.² EPA's 2013 letter concluded that, with respect to the allegation that ADEM intentionally discriminated against the African American residents of the Ashurst Bar/Smith community during the public involvement process for the permitting of a modification to the Tallassee Waste Disposal Center, Inc. in 2003, there was insufficient evidence of non-compliance.

The remaining allegation (as originally accepted for investigation) was:

Whether ADEM's failure to require the Tallapoosa County Commission to properly use the siting factors listed in the EPA June 2003 Title VI Investigative Report (EPA File No. 28R-99-R4)³ in considering for approval the 2003 application to modify Permit #62-11 for the Tallassee Waste Disposal Center, Inc.,⁴ located in Tallassee, Tallapoosa County, Alabama, had a discriminatory effect on the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race.

With respect to this issue, as investigated, ECRCO finds that the record does not establish a prima facie case of discrimination based on disparate impact with respect to allegations set forth in this complaint regarding the 2003 permit modification. Accordingly, ECRCO finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation in regard to the 2003 permit modification at issue in this case and EPA File No. 06R-03-R4 is closed as of the date of this letter. As explained later in this letter, information gathered during the course of this investigation and additional pending investigations involving ADEM have raised issues not addressed by this letter. ECRCO will be contacting ADEM to discuss these issues and possible options for addressing them.

Clarification of Issue Investigated in This Case

EPA originally accepted for investigation the allegation that ADEM's failure to require the Tallapoosa County Commission to properly use the siting factors listed in the EPA June 2003 Title VI Investigative Report (EPA File No. 28R-99-R4)⁵ in the 2003 permit modification process for the Tallassee Waste Disposal Center, Inc. had a discriminatory effect on the predominantly African-American residents of the Ashurst Bar/Smith community. However, during the course of the investigation, ECRCO determined that whether ADEM properly considered the siting factors in its decision to approve the 2003 permit modifications is not germane to ECRCO's determination of whether there was an adverse disparate impact that resulted from ADEM's approval of the 2003 permit modification. Specifically, as discussed more fully below, there is insufficient evidence that the 2003 permit modifications themselves –

¹ Letter from Karen D. Higginbotham, Director, OCR to (b) (6) Privacy, Complainant, Acceptance of Administrative Complaint (September 7, 2005).

² Letter from Rafael DeLeon, Director, OCR to Lance LeFleur, Director, ADEM (January 25, 2013): Partial Dismissal of Title VI Administrative Complaint.

³ Letter from Karen D. Higginbotham, Director, OCR to Luke Cole, Director, Center for Race Poverty and the Environment (CRPE) and James W. Warr, Director, ADEM; Re: EPA File No. 28R-99-R4 (July 1, 2003).

⁴ Tallassee Waste Disposal Center, Inc. is now known as Stone's Throw Landfill.

⁵ Letter from Karen D. Higginbotham, Director, OCR to Luke Cole, Director, Center for Race Poverty and the Environment (CRPE) and James W. Warr, Director, ADEM; Re: EPA File No. 28R-99-R4 (July 1, 2003).

whether or not they were considered in light of the six solid waste management planning criteria (i.e. the six “siting factors”) – were sufficiently causally connected to the disparate adverse harms alleged by Complainants.⁶

The following provides additional context and background regarding the six “siting factors”⁷ listed in the EPA June 2003 Title VI Investigative Report. In response to a 1999 Title VI complaint alleging adverse and disparate impact violations by ADEM in connection with the issuance and modification of permits at four specific municipal solid waste landfills in Alabama (not including the Tallassee Waste Disposal Center, Inc.), EPA issued its legal and factual findings in a decision letter dated July 1, 2003, and accompanying June 2003 Investigative Report. EPA found no violation of Title VI with respect to disparate impact claims for each of the four landfills, as well as an intentional discrimination claim asserted with regard to the permitting of all municipal solid waste landfills in Alabama.

At the time of EPA’s 2003 investigation of EPA File No. 28R-99-R4, it was ADEM’s position that the “siting factor” assessments were the responsibility of local governments and that it could only deny a permit if the site was environmentally unsuitable from a technical perspective (and not for siting factor reasons). The 2003 Investigative Report and Decision Letter stated: “... EPA notes that the administration of ADEM’s Solid Waste Program may nevertheless lead to violations of EPA’s Title VI regulations in the future because the potential failure to consider safety or socio-economic impacts could lead to ADEM-permitted landfills that have an adverse disparate impact on a population protection by EPA’s Part 7 regulations.”⁸ EPA did not, however, determine that failure to ensure that such criteria were considered by ADEM or local governments was in and of itself a Title VI violation. Ultimately, a Title VI violation would arise if an ADEM-approved permit actually caused adverse and disproportionate impacts.

⁶ Ultimately, Complainants’ allegations of harm appear to be related to the initial permitting and siting of the Tallassee Waste Disposal Center, Inc. ADEM’s decision to permit the Tallassee Waste Disposal Center, Inc. occurred in 2001, several years prior to the filing of this complaint.

⁷ Under the Alabama Code at § 22-27-47 and § 22-27-48, the state legislature specifically directs the requirements outlined relating to permit applications at the local host jurisdiction. ADEM has consistently taken a position that such responsibilities are outside their purview. Under ADEM Admin. Code r. §335-13-9-.06, local authorities must develop Solid Waste Management Plans that are consistent with the various outlined procedures, which are inclusive of the six criteria outlined under Alabama Code § 22-27-47(b)(11) and submit them to ADEM. The six criteria are as follows:

- a. The jurisdiction’s solid waste management needs as identified in its plan;
- b. The relationship of the proposed location or locations to planned or existing development, to major transportation arteries and to existing state primary and secondary roads;
- c. The relationship of the proposed location or locations to existing industries in the jurisdiction or state that generate large volumes of solid waste and to the areas projected by the state or local regional planning and development commission for development of industries that will generate solid waste;
- d. The costs and availability of public services, facilities and improvements which would be required to support a facility in this location and protect public health, safety and the environment;
- e. The potential impact a facility in the proposed location or locations would have on public health and safety, and the potential that such locations can be utilized in a manner so as to minimize the impact on public health and safety; and
- f. The social and economic impacts that a facility at the proposed location would have on the affected community, including changes in property values, community perception and other costs.

⁸ EPA June 2003 Title VI Investigative Report (EPA File No. 28R-99-R4, Yerkwood, 95-96, June 2003.)

Consequently, our investigation of the allegations arising in this complaint focused on whether or not ADEM's 2003 permit modification decision for the Tallassee Waste Disposal Center, Inc. resulted in an adverse and disparate impact to the predominantly African-American residents of the Ashurst Bar/Smith community.

In conducting the investigation, ECRCO gathered and reviewed all of the information relevant to the complaint. This information included the complaint submitted to ECRCO, ADEM's responses to ECRCO's acceptance of the complaint, and all other letters and emails ECRCO received from the complainant and recipient pertaining to the 2003 permit modification for the Tallassee Waste Disposal Center, Inc. ECRCO also considered information gathered through various emails from, and telephone interviews with, the Complainants and community members in 2016 and 2017.

Legal Standard

EPA's investigation was conducted under the authority of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation (40 C.F.R. Part 7) and consistent with EPA's Case Resolution Manual. EPA's regulation at 40 C.F.R. §7.35(b) states, in part, that "A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, or national origin."

The issue of whether ADEM's approval of the 2003 application to modify Permit #62-11 for the Tallassee Waste Disposal Center, Inc. had a discriminatory effect on the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race, was analyzed under a *disparate impact* or *discriminatory effects* standard.⁹

In a disparate impact case, EPA must determine whether the recipient used a facially neutral policy or practice that had a sufficiently adverse (harmful) and disproportionate effect based on race, color, or national origin. This is referred to as the *prima facie* case. To establish an adverse disparate impact, EPA must:

- (1) identify the specific policy or practice at issue;
- (2) establish adversity/harm;¹⁰

⁹ *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582, 593 (1983); *Alexander v. Choate*, 469 U.S. 287, 293 (1985). Many subsequent cases have also recognized the validity of Title VI disparate impact claims. See, e.g. *Villanueva v. Carere*, 85 F.3d 481 (10th Cir. 1996); *New York Urban League v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995); *Chicago v. Lindley*, 66 F.3d 819 (7th Cir. 1995); *David K. v. Lane*, 839 F.2d 1265 (7th Cir. 1988); *Gomez v. Illinois State Bd. Of Educ.*, 811 F.2d 1030 (7th Cir. 1987); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403 (11th Cir. 1985); *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984). In addition, by memorandum dated July 14, 1994, the Attorney General directed the Heads of Departments and Agencies to "ensure that the disparate impact provisions in your regulations are fully utilized so that all persons may enjoy equally the benefits of [f]ederally financed programs." Attorney General Memorandum on the use of the Disparate Impact Standard in Administrative Regulations under Title VI of the Civil Rights Act of 1964 (July 14, 1994) (<http://www.justice.gov/ag/attorney-general-july-14-1994-memorandum-use-disparate-impact-standard-administrative-regulations>).

¹⁰ Adversity exists if a fact specific inquiry determines that the nature, size, or likelihood of the impact is sufficient to make it an actionable harm.

- (3) establish disparity;¹¹ and
- (4) establish causation.¹²

The focus here is on the consequences of the recipient's policies or decisions, rather than the recipient's intent.¹³ The neutral policy or decision at issue need not be limited to one that a recipient formalizes in writing, but also could be one that is understood as "standard operating procedure" by recipient's employees.¹⁴ Similarly, the neutral practice need not be affirmatively undertaken, but in some instances could be the failure to take action, or to adopt an important policy.¹⁵

If the evidence establishes a prima facie case of adverse disparate impact, as discussed above, EPA must then determine whether the recipient has articulated a "substantial legitimate justification" for the challenged policy or practice.¹⁶ "Substantial legitimate justification" in a disparate impact case is similar to the Title VII employment concept of "business necessity," which in that context requires a showing that the policy or practice in question is demonstrably related to a significant, legitimate employment goal.¹⁷ The analysis requires balancing recipients' interests in implementing their policies with the substantial public interest in preventing discrimination.

If a recipient shows a "substantial legitimate justification" for its policy or decision, EPA must also determine whether there are any comparably effective alternative practices that would result in less adverse impact. In other words, are there "less discriminatory alternatives?"¹⁸ Thus, even

¹¹ In analyzing disparity, EPA analyzes whether a disproportionate share of the adversity/harm is borne by individuals based on their race, color, national origin, age, disability or sex. A general measure of disparity compares the proportion of persons in the protected class who are adversely affected by the challenged policy or decision and the proportion of persons not in the protected class who are adversely affected. See *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 576-77 (2d Cir. 2003).

¹² See *N.Y.C. Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities").

¹³ *Lau v. Nichols*, 414 U.S. 563, at 568 (1974).

¹⁴ If as part of a recipient's permitting of a facility, a recipient makes a decision with respect to the siting of a facility, such decision may not intentionally discriminate or have a discriminatory effect on a protected population. EPA's regulation states, "A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart." 40 C.F.R. § 7.35(c).

¹⁵ See, e.g., *Maricopa Cty.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (disparate impact violation based on national origin properly alleged where recipient "failed to develop and implement policies and practices to ensure [limited English proficient] Latino inmates have equal access to jail services" and discriminatory conduct of detention officers was facilitated by "broad, unfettered discretion and lack of training and oversight" resulting in denial of access to important services).

¹⁶ *Georgia State Conf.*, 775 F.2d at 1417.

¹⁷ *Wards Cove Packing Inc. v. Antonio*, 490 U.S. 642, 659 (1989); *Griggs v. Duke Power Co.*, 401 U.S. 424, 433-36 (1971). The concept of "business necessity" does not transfer exactly to the Title VI context because "business necessity" does not cover the full scope of recipient practices that Title VI covers, which applies far more broadly to many types of public and non-profit entities. See *Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Communities Project*, 135 S. Ct. 2507, 2522-24 (2015) (recognizing the limitations on extension of the business necessity concept to Fair Housing Act complaints).

¹⁸ *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993).

if a recipient demonstrates a “substantial legitimate justification,” the challenged policy or decision will nevertheless violate federal civil rights laws if the evidence shows that “less discriminatory alternatives” exist.

Analysis

The issue being investigated in the instant complaint is whether ADEM’s approval of the 2003 modification to Permit #62-11 for the Tallassee Waste Disposal Center, Inc. had a discriminatory effect on the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race.

Consistent with the legal standard outlined above for determining whether a prima facie case is established, EPA looks to determine whether a causal connection exists between a recipient’s facially neutral policy or practice and an adverse disparate impact.¹⁹ Specifically, in a case such as this one where the policy or practice relates to a permit modification, EPA generally looks at the modification at issue and the modification’s effects. While permit modifications can trigger Title VI violations, there must be some causal connection between the permit modification actions that appear to be facially neutral and the alleged adverse (harmful) and disparate effects.²⁰ If EPA cannot establish that each of the prima facie elements has been met, then EPA does not have sufficient evidence to establish a prima facie case of adverse disparate impact and cannot determine that the recipient has engaged in discrimination.

To determine whether a disparate impact occurred as a result of ADEM’s issuance of the 2003 permit modification, with or without consideration of the siting factors, ECRCO examined the proposed permit modification actions and whether they could have caused the alleged disproportionate harms. As discussed more specifically below, as to each of the alleged harms relating to the 2003 permit modifications, ECRCO finds insufficient evidence to establish a prima facie case of disparate impact discrimination.

October 2001 Permit (Permit #62-11)

In October 2001, ADEM granted Permit #62-11, for a Resource Conservation and Recovery Act (RCRA) Subtitle D²¹ municipal solid waste permit for the Tallassee Waste Disposal Center, Inc., an approximately 123.47-acre disposal area.²² Within the boundaries of the Tallassee Waste Disposal Center, Inc. there was a formerly operated, but closed sanitary landfill.

The 2003 Permit Modification

¹⁹ See *New York City Envtl. Justice Alliance v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (citing *Brown v. Coach Stores, Inc.*, 163 F.3d 706, 712 (2d Cir. 1998); *New York Urban League, Inc. v. New York*, 71 F.3d at 1036).

²⁰ See *New York City Envtl. Justice Alliance v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must “allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities”).

²¹ 40 C.F.R. Part 258 (RCRA Subtitle D regulation for municipal solid waste landfill.)

²² ADEM, Public Hearing Transcript, August 26, 2003, at 11.

The permit modification considered and approved the following:²³

- Design and construction of cells 2A and 2B, an approximately 5.11-acre municipal solid waste (MSW) disposal area;
- Design and construction of an approximately 6.56-acre construction and demolition (C/D) materials landfill;
- Relocation of the facility's sedimentation pond; and
- Operational changes.²⁴

The types of waste accepted, service area, and daily accepted waste volumes and the landfill boundaries that were permitted in 2001, remained unchanged in the proposed and approved 2003 permit modification.²⁵

The Alleged Harms

The alleged harms that relate to the 2003 permit modification were as follows:²⁶

- **Environmental and Community Health Concerns**
 - Impact from methane exceedances for the entire first year after reopening and lack of notification;
 - Impact from proximity to natural gas line;
 - Impact to wetlands, natural springs, environmental balance in region;
 - Air pollution from landfill emissions into populated areas due to wind patterns;
 - Impact to hunting and wildlife from surface water contamination and impacts to foliage;
 - Increase in disease vectors;
 - Drinking water well contamination concerns;
 - Impact on the Tuscaloosa Aquifer;
 - Impact of sedimentation pond relocation and storm water runoff;

²³ ECE Letter to ADEM, Request for Major Modification, April 30, 2003. In the original ECE Letter to ADEM, Request for Major Modification, April 30, 2003, there had been a request to add an 80-acre parcel to the permitted area. This request was withdrawn by ECE in a Letter to ADEM, Revision to Major Modification Request, May 30, 2003, and therefore, the addition of the 80-acre parcel was not ultimately considered for approval by ADEM.

²⁴ On June 4, 2003, ECE submitted a request to ADEM for operational changes as follows: 1) for an alternative design for the drainage layer that continued to meet the permeability standard and an equivalent hydraulic flow rate; 2) for leachate recirculation; and 3) for implementation for the use of alternative daily covers. ECE Letter to ADEM, Re: Comments on Draft Permit, June 4, 2003.

²⁵ ADEM, Public Hearing Transcript, August 26, 2003, at 11; ADEM, Public Hearing Notice, July 17, 2003.

²⁶ Letter from (b) (6) Privacy, to Karen D. Higginbotham, Director, OCR (September 3, 2003), includes letter from (b) (6) Privacy to James W. Warr, Director, ADEM (August 29, 2003) as attachment; Letter from (b) (6) Privacy, to Karen D. Higginbotham, Director, OCR (December 15, 2003), at 3. Many of the issues raised in the complaint were phrased in the form of questions to ADEM. ECRCO has grouped and listed these items as alleged harms relating to the issues investigated. Items remaining after the dismissal of allegation 1 and included in list are items 5-29, 33 on pages 1-3, 5 of the letter from (b) (6) Privacy to James W. Warr, Director, ADEM, August 29, 2003. In addition, ECRCO considered information gathered through various emails from, and telephone interviews with, the Complainants and community members in 2016 and 2017.

- Impact on the Gleeden Branch and other streams that leave the area and eventually contribute to water sources of downstream municipalities
- Impact of landfill on farmers' animals and food gardens;
- **Transportation and Safety Concerns**
 - Lack of an evacuation and decontamination plan;
 - Lack of emergency response equipment and infrastructure (ambulances, fire trucks, etc.);
 - Impact to church due to proximity of landfill;
 - Impacts resulting from traffic and roadway design;
 - Impacts to homes due to close setbacks of residences to roadway;
 - Impacts from landfill traffic coming from prohibited directions;
 - Large service area; and
 - Issues relating to line of sight, lack of signage, and traffic speed enforcement.
- **Non-Environmental Concerns Raised by Complainants**
 - Diminution of property value;
 - Displacement of landowners; and
 - Stigma of living near a landfill.

For purposes of analyzing whether there is a prima facie case of discrimination based on disparate impacts, ECRCO has grouped the alleged harms into the same topical categories utilized above.

1. Environmental and Community Health Concerns

- Methane Gas Exceedances and Lack of Notification:

Complainants raised concerns regarding “numerous non-compliance reports of high methane gas levels” at Tallassee Waste Disposal Center, Inc. since its reopening and the initial placement of waste in 2002 and also raised concern that “the community was not notified and to date there is not in place a mechanism to alert the community of such dangers.”²⁷ With respect to the

²⁷ Letter from (b) (6) Privacy, to Karen D. Higginbotham, Director, OCR (September 3, 2003), includes letter from (b) (6) Privacy to James W. Warr, Director, ADEM (August 29, 2003) at 3.

concern regarding “notification,” ECRCO has found that current state²⁸ and federal²⁹ regulations do not require public notification when or if a landfill detects an emission exceedance during the course of their quarterly monitoring. The permitted facility is required to notify the state regulatory office within a prescribed time period and take the necessary steps to protect human health and the environment.

With respect to the concern raised in the complaint regarding “reports of high methane gas levels,” ECRCO examined whether the high methane gas levels detected in 2002 were causally related to the 2003 permit modification actions. ECRCO confirmed that the landfill engineers reported that there was an increased production of methane gas due to a portion of the Tallassee Waste Disposal Center, Inc. having a tendency to hold water and maintain moisture.³⁰ This portion of the landfill had soils introduced to modify the side slopes and improve positive drainage resulting in both less saturated soils and methane gas generation. This portion of the landfill was closed prior to the 2003 permit modification.³¹ ECRCO determined that, although located within the property boundaries of the Tallassee Waste Disposal Center, Inc., this closed sanitary landfill was a separate and completely independent disposal unit. The Subtitle D municipal solid waste landfill related to the 2003 permit modification was just being designed for construction in 2003 and, at that time, would not have contributed to any increase in methane gas levels since waste disposal activities and methane gas generation had not begun. As such, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged harm of increased methane gas levels – exceedances, as articulated in the complaint.

- Natural Gas Line:

²⁸ Alabama state requirements outlined at ADEM Admin. Code r. §335-13-4-.16(3) are as follows: 3. If explosive gas levels exceeds the limits specified in this Rule, the permittee shall:

(i) Immediately take all necessary steps to ensure protection of human health and property and notify the Department;

(ii) Within 7 days of detection, place in the operating record of the facility the explosive gas levels detected and the immediate steps taken to protect human health and property;

(iii) Within 20 days of detection, submit to the Department for approval a remedial plan for the explosive gas releases. This plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall be implemented upon approval by the Department, but within 60 days of detection. Also within 60 days of detection, a copy of the plan shall be placed in the operating record of the facility and the Department notified that the plan has been implemented.

²⁹ Under RCRA, the requirements at 40 C.F.R. §258.23(c) are the following: (c) If methane gas levels exceeding the limits specified in paragraph (a) of this section are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the State Director;

(2) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the State Director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

³⁰ ECE, Tallassee Waste Disposal Center, Inc. Explosive Gas Report Summary, Permit No. 62-11 Response Letter (October 15, 2002).

³¹ ECE, Tallassee Waste Disposal Center, Inc. Explosive Gas Report Summary, Permit No. 62-11 Response Letter (October 15, 2002).

Complainants raised concerns about the landfill's overall proximity to a natural gas line. ECRCO confirmed that, based on the landfill's engineering drawings, a 100-foot "power easement" bisects the landfill's property.³² The actual existence of a natural gas line within the 100-foot easement was not confirmed by ECRCO's investigation as the survey does not depict the description of the type of utility or the easement owner(s). Any gas line, as well as the land on which the gas line would be found, are within the control and purview of the appropriate utility company. The 100-foot easement existed before the 2003 permit modification; and, the modification did not impact the easement.³³ Accordingly, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged harm related to a natural gas line or the easement for that line.

- Wetlands:

The complaint raised a concern about the alleged environmental harm to wetlands resulting from the relocation of the sedimentation pond under the 2003 permit modification. Under the 2003 permit modification, although wetlands were impacted, the facility proposed and the Department of the Army, Mobile District, Corps of Engineers (COE) approved, payment into a mitigation bank to develop relocated wetlands within the same watershed in order to address any impact on water quality that would result from the permitted construction activities.³⁴ Once the mitigation was approved, the COE issued a permit to the landfill to fill in the wetlands located within the permitted area.³⁵ In light of the approved wetlands mitigation and relocation, there is insufficient evidence in the record to conclude that there was adverse harm with respect to the wetlands³⁶

- Wind Blown Pollution:

Complainants assert harm due to wind patterns carrying pollution and landfill emissions into populated areas. While operation of the 2003 expansion area could potentially increase the landfill's overall emissions, ECRCO found that the facility has taken measures to monitor and address emissions. ECRCO found that the facility implemented quarterly landfill gas monitoring,³⁷ and installed an emissions control system in the closed sections of the MSW landfill.³⁸ The facility further extended the control system over time into the former sanitary

³² ECE Permit Drawings for Modification of Sunflower Landfill Inc. Cell 2A, Cell 2B, C&D Cell (March 2003).

³³ ECE Permit Drawings for Modification of Sunflower Landfill Inc. Cell 2A, Cell 2B, C&D Cell (March 2003).

³⁴ ADEM Administrative Code Division 13 prohibits the disposal of solid wastes in wetlands. The relocation of wetlands requires approval from the U.S. Department of the Army, Mobile District, Corps of Engineers (COE) and the State of Alabama. 40 C.F.R. §258.12 (Wetlands); ADEM Admin. Code r. §335-13-4-.01(2)(c) Landfill Unit Siting Standards - Landfill units including buffer zones shall not be permissible in wetlands, beaches or dunes.

³⁵ ADEM Response to Comments, October 20, 2003, at 3.

³⁶ Section 404 of the Clean Water Act establishes a program to regulate the discharge of fill materials into the waters of the U.S. The program through permitting activities allows for restoration through compensatory mitigation. See 40 C.F.R. 230 Subpart J—Compensatory Mitigation for Losses of Aquatic Resources. There are three (3) options for compensatory mitigation to address restoration of the permitted activities. The operator (permittee) proposes which option they would like to employ for such activities. These options include the mitigation bank, fee program to government or non-profit, or the operator (permittee) undertakes the mitigation. Here, the permittee has selected the mitigation bank as their compensatory mitigation option.

³⁷ See i.e., Environmental Consulting & Engineering, Inc. (ECE), March 24, 2005 Tallassee Waste Disposal Center, Inc. Explosive Gas Report Summary First Quarter 2005, Permit No. 62-11.

³⁸ ADEM Engineering Analysis, Stone's Throw Landfill LLC, Facility No. 205-0015 (April 13, 2010).

landfill operation,³⁹ and into the closed C/D cells, and into portions of the active phase of the landfill. Therefore, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and alleged increased air pollution.

- Hunting:

Complainants alleged harms to the surface water and foliage used by the wildlife and impacts to hunting within the community due to the 2003 permit modification. However, ECRCO could not establish a prima facie case of disparate adverse harm with respect to this allegation. First, ECRCO could not find any information in the record with respect to the condition of the surface water and foliage used by wildlife prior to the 2003 permit modification. As such, ECRCO could not find that the record established a baseline upon which to measure potential impact to surface water and foliage used by wildlife which could have resulted from any of the 2003 permit modification actions. Therefore, ECRCO finds insufficient evidence in the record to conclude that there was adverse harm with respect to the surface water and foliage used by wildlife and its impact on hunting.

- Disease Vectors:

Complainants raised a concern that the 2003 modification's approval of a switch from use of daily soil cover to use of an alternative daily cover material would increase exposure to rodents, insects, and other wildlife including wild dogs and the resulting potential for transmission of diseases. During a 2016 interview, Complainants stated that they had observed increases in vultures, wild dogs, deer and crows since the 2003 modification.⁴⁰

ECRCO found that alternative materials may be approved in lieu of daily soil cover if the operator shows that they are protective of human health and the environment⁴¹ and minimize and manage the impact from animals and other disease vectors.⁴² ECRCO found that, in this case, ADEM approved use of alternative cover materials on a daily basis, as well as the use of a soil cover at least once per week at the end of the operational work week.⁴³

ECRCO confirmed that prior to the 2003 permit modification, previous construction activities conducted within the ~500-acre site removed natural habitats, re-graded the site, and prepared the property for the landfill's development. ECRCO also confirmed that the 2003 permitting actions continued the site development/re-development -- specifically, the development of cells 2a and 2b, the C&D unit, and the associated sediment and erosion control units. ECRCO acknowledges that it is possible that these 2003 permit activities could have impacted animal population numbers, but, there is insufficient evidence in the record for ECRCO to conclude that

³⁹ ADEM Engineering Analysis, Stone's Throw Landfill LLC, Facility No. 205-0015 (April 13, 2010).

⁴⁰ February 10, 2016 Interview with Complainants.

⁴¹ 40 C.F.R. §258.21 (provisions related to alternative cover material requirements).

⁴² 40 C.F.R. §258.22 (provisions related to disease vectors).

⁴³ On June 4, 2003, ECE submitted a request to ADEM for operational changes as follows: 1) for an alternative design for the drainage layer that continued to meet the permeability standard and an equivalent hydraulic flow rate; 2) for leachate recirculation; and 3) for implementation for the use of alternative daily covers. ECE Letter to ADEM, Re: Comments on Draft Permit, June 4, 2003.

the 2003 permit modification actions themselves resulted in sufficiently significant harm with regard to increases in the animal population. As such, ECRCO could not establish a causal link between the 2003 permit modification and any changes in animal population numbers.

- Drinking Water Wells:

Concerns were raised about pre-existing safety hazards related to drinking water, such as the presence of toluene, including in well water and naturally occurring springs, and how the continued development of the landfill could contribute to these safety hazards.

ECRCO found that prior to the permitting of the Tallassee Waste Disposal Center, Inc. Subtitle D municipal solid waste landfill in October 2001, a preliminary environmental investigation report and a hydrogeological evaluation were completed.⁴⁴ The report documented pre-existing impacts from metals and various pollutants to a local naturally occurring spring and residential drinking water wells located south, and southeast, respectively, from the landfill property. The consultants' recommendations from these assessments included the need to establish an alternative source of drinking and domestic water as well as utilization of a water purification system for two properties.⁴⁵ ADEM concurred with these recommendations.⁴⁶

With respect to whether the continued development of the landfill contributed to the pre-existing safety hazards, the composite liner and leachate collection system were designed to prevent leachate migration into the groundwater.⁴⁷ The groundwater monitoring system was designed to evaluate groundwater quality at the landfill property boundary.⁴⁸ Moreover, ECRCO found that the permanent and temporary drainage control features were designed to protect surface water quality.

ECRCO did not identify any evidence to suggest that the composite liner and leachate collection system, and the site's permanent and temporary drainage control features in the 2003 modification would contribute to pre-existing hazards. As a result, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged increased impact on drinking water.

- Tuscaloosa Aquifer:

Complainants raised a concern regarding impact to the Tuscaloosa Aquifer resulting from this permit modification. Impacts to water quality could occur from the land disturbing activities associated with the permit modification. However, the landfill addressed any potential impacts

⁴⁴ Mid-South Testing Inc. Tallassee Waste Disposal Center Inc. Preliminary Environmental Assessment prepared for Whatley Drake LLC (August/September 2000) and Southern Environmental Resources, Inc. Tallassee Waste Disposal Center, Inc. Hydrogeologic Evaluation (June 14, 2000).

⁴⁵ Furthermore, the consultants noted that a local water authority provided service to one property, but at the time of their report, this service had not been routed into the residence. *Id.*

⁴⁶ ADEM Memorandum, Review of Preliminary Environmental Investigation (January 4, 2001).

⁴⁷ ADEM Admin. Code r. §335-13-4-.18 (requirements relating to liners and leachate collection), 40 C.F.R. §258.40 (requirements relating to liners and leachate collection)

⁴⁸ ADEM Admin. Code r. §335-13-4-.14 and §335-13-4-.27 (requirements relating to groundwater monitoring systems), 40 C.F.R. §258.51 (requirements relating to groundwater monitoring systems).

from the facility's drainage and discharges that could result from land disturbing activities through the landfill's construction of measures designed to be protective of human health and the environment – a composite liner and leachate collection system, and the site's permanent and temporary drainage control features that protect surface waters that feed local aquifers.⁴⁹ The groundwater monitoring system was designed to detect groundwater impact and evaluate groundwater quality at the landfill property boundary.⁵⁰

Complainants supplied evidence of a sediment erosion control feature that failed due to an extreme storm.⁵¹ ECRCO's investigation found that permanent and temporary sediment control features are designed to control runoff from routine storm events and not designed to manage high volume rain events rising to the level of an "Act of God." ECRCO did not identify any evidence to suggest that the composite liner and leachate collection system, the groundwater monitoring system, or the site's permanent and temporary drainage control features did not adequately address any potential impacts from routine storm events to the Tuscaloosa Aquifer. As a result, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged harm to the water quality of the Tuscaloosa Aquifer.

- Sedimentation Pond and Storm Water Runoff:

While not making an allegation of harm related to the movement of the sedimentation pond, the Complainants did express concern as to why the pond was being moved. Movement of the sedimentation pond facilitated the development of the proposed landfill cells.⁵² While the acts carried out under the 2003 permit modification could have contributed to runoff from the landfill, evidence shows that mitigating measures were put in place at the time to address these issues. The movement of the sedimentation pond was requested "to better collect and treat storm water runoff from the site."⁵³ ADEM reviewed the request and determined that the new sedimentation pond location adequately removed sediments from the storm water runoff prior to release onto adjacent properties or waters, and its relocation would have no adverse impact on quality of surface waters discharged from the site.⁵⁴ ECRCO did not identify any evidence to suggest that sediments were not adequately removed from the storm water runoff prior to release. Therefore, there is insufficient evidence to show a causal link between the 2003 permit modification, including the movement of the sedimentation pond, and alleged increased runoff.

- Gleeden Branch and Other Surface Water:

Complainants raised a concern regarding impacts resulting from the 2003 permit modification to Gleeden Branch and other surface waters that eventually contribute to water sources for downstream municipalities. Impacts to water quality could occur from the facility, including the

⁴⁹ ADEM Admin. Code r. §335-13-4-.17 (requirements relating to drainage); §335-13-4-.18 (requirements relating to liners and leachate collection).

⁵⁰ ADEM Admin. Code r. §335-13-4-.14 and §335-13-4-.27 (requirements relating to groundwater monitoring systems), 40 C.F.R. §258.51 (requirements relating to groundwater monitoring systems).

⁵¹ Photographs provided by Complainants, March 4, 2016.

⁵² ECE Permit Drawings for Modification of Sunflower Landfill Inc. Cell 2A, Cell 2B, C&D Cell (March 2003).

⁵³ ADEM, Response to Comments, October 20, 2003, at 4.

⁵⁴ ADEM, Response to Comments, October 20, 2003, Response to Comment 10, page 4.

land disturbing activities associated with permit modification; however, the facility's permanent and temporary drainage control features are designed to reduce the impact to surface waters.⁵⁵ ECRCO found that, at the time, the management of surface water discharges were addressed by the relocation of the sedimentation pond and other permanent and temporary drainage control features associated with the site's development. Therefore, ECRCO finds insufficient evidence in the record to conclude that there was adverse harm with respect to Gleeden Branch and other surface waters as alleged.

- Farming and Gardens:

A concern was raised "about the impact of the landfill on our farmers' animals and the gardens that people use for food."⁵⁶ A subsequent concern was conveyed by Complainants on behalf of an unnamed landowner about the harm to farming and gardening due to alleged contaminated soil and water from the landfill.⁵⁷

With regard to the 2003 modification, as mentioned above, the composite liner and leachate collection system were designed to prevent leachate migration into the groundwater.⁵⁸ The groundwater monitoring system was designed to detect groundwater impacts and evaluate groundwater quality at the landfill's property boundary.⁵⁹ Moreover, ECRCO found that the permanent and temporary drainage control features were designed to protect not only surface waters, but also adjoining properties from runoff.

ECRCO did not identify any evidence to suggest that the composite liner and leachate collection system, the groundwater monitoring system, or the site's permanent and temporary drainage control features did not adequately prevent leachate migration into the groundwater or failed to protect adjoining properties from runoff. As a result, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged harm to farms and gardens on adjoining properties.

2. Transportation and Safety Concerns

Complainants raised concerns about the lack of an evacuation or decontamination plan for the community and inadequate emergency response infrastructure. Complainants also alleged impacts to residents and a local church relating to transportation, including those resulting from traffic and roadway design.

⁵⁵ ADEM Admin. Code r. §335-13-4-.17 (requirements relating to drainage); §335-13-4-.18 (requirements relating to liners and leachate collection).

⁵⁶ Letter from (b) (6) Privacy, to Karen D. Higginbotham, Director, OCR (September 3, 2003), includes letter from (b) (6) Privacy to James W. Warr, Director, ADEM (August 29, 2003) at 3.

⁵⁷ February 10, 2016 Interview with Complainants.

⁵⁸ ADEM Admin. Code r. §335-13-4-.18 (requirements relating to liners and leachate collection), 40 C.F.R. §258.40 (requirements relating to liners and leachate collection)

⁵⁹ ADEM Admin. Code r. §335-13-4-.14 and §335-13-4-.27 (requirements relating to groundwater monitoring systems), 40 C.F.R. §258.51 (requirements relating to groundwater monitoring systems).

EPA's regulations implementing RCRA Subtitle C require evacuation and decontamination plans for communities at some hazardous waste disposal facilities.⁶⁰ The Tallassee Waste Disposal Center, Inc. receives non-hazardous solid waste, such as household garbage and construction and demolition materials which are regulated under RCRA Subtitle D, not Subtitle C. Landfill owners and operators of RCRA D facilities like the Tallassee Waste Disposal Center, Inc. must ensure that the concentration level of explosive gases including methane gas must not exceed the lower explosive limits of methane at the property boundary.⁶¹ Furthermore, ECRCO found that Tallassee Waste Disposal Center, Inc. has an explosive gas monitoring and reporting plan, conducts quarterly monitoring of landfill gas, and has installed a landfill gas control system.⁶²

The proposed 2003 permit modification did not impose any new or modified roadway, safety, emergency response, roadway setbacks, or other transportation conditions. The proposed permit modification did not alter the existing landfill service area or the truck route for landfill access. Furthermore, the proposed permit modification did not request an adjustment in the daily waste acceptance rates (which remained at 1,500 tons per day) or the types of waste approved for acceptance at the Tallassee Waste Disposal Center, Inc. ECRCO found that issues relating to the proximity to the church, roadway design, line of sight, signage, and traffic speed enforcement, and emergency infrastructure are not impacted by the permit modification. Instead, for example, the specific route used by trucks in proceeding to the landfill was addressed by the 1999 local host agreement between the operator and Tallapoosa County,⁶³ which was in effect at the time of the 2003 permit modification. As a result, there is insufficient evidence to show a causal link between the 2003 permit modification and the alleged harm resulting from traffic and roadway design.

3. Non-Environmental Concerns Raised by Complainants

Complainants raised concerns related to diminution of property values, displacement of landowners, and stigma of living near a landfill, and that these were impacted by the 2003 permit modification actions. For its part, EPA has substantial discretion to determine the types of harms, on a case by case basis, that warrant investigatory resources and are sufficiently harmful to violate Title VI.⁶⁴ ECRCO determined that it would not investigate substantively the alleged harms of diminution of property values, displacement of landowners, and stigma of living near a landfill in this instance because, although the 2003 permit modification activities (*i.e.* the development of cells 2A and 2B, the C&D unit, and the associated sediment and erosion control units) could conceivably have resulted in diminution of property values, displacement of landowners, and contributed to stigma, there is insufficient evidence in the record to suggest that

⁶⁰ 40 C.F.R. Part 267, Subpart D, *Contingency Plan and Emergency Procedures*.

⁶¹ ADEM Admin. Code r. §335-13-4-.16; 40 C.F.R. Part 258.23.

⁶² *Explosive Gas Monitoring and Reporting Plan*, Appendix N of the Tallassee Waste Disposal Center Solid Waste Disposal Facility Permit Application, June 2000.

⁶³ Tallapoosa County Commission. Local Host Agreement (November 15, 1999). This agreement specified a particular route that traffic was to take to the landfill. The application for the 2003 permit modification did not request changes to this route.

⁶⁴ See *Choate*, 469 U.S. at 293-94: "Title VI had delegated to the agencies in the first instance the complex determination of what sorts of disparate impact upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts." See also *Alexander v. Sandoval*, 532 U.S. 275, 306 (2001) (Stevens, J., dissenting).

the permit modification actions themselves resulted in a sufficiently significant harm with regard to stigma, displacement of landowners and property values. Instead, as previously noted, Complainants' allegations of harm generally, and with respect to these identified concerns in particular, appear to be related to the initial permitting and siting of the Tallassee Waste Disposal Center in 2001, rather than to the 2003 permit modification at issue in this case.

Conclusion

For the reasons set forth above, the record does not establish a prima facie case of discrimination based on disparate impact with respect to allegations set forth in this complaint regarding the 2003 permit modification. Accordingly, ECRCO finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation in regard to the 2003 permit modification at issue in this case. In light of the findings set forth in this letter, this case is closed as of the date of this letter.

While there is insufficient evidence for finding a violation of EPA's nondiscrimination regulation relative to the specific issue raised in this case and the 2003 permit modification actions, ECRCO has continued to hear community concerns regarding alleged discrimination relating to environmental permitting actions in Alabama, including with respect to whether ADEM examines the decision-making processes of the local host governments and the regional planning authorities relative to permitting actions. In addition, ECRCO has received information and complaints with respect to ADEM's public participation program as well as ADEM's implementation of a foundational non-discrimination program that establishes appropriate procedural safeguards for addressing civil rights complaints and implementing policies and procedures to ensure access for persons with disabilities and limited-English proficiency to ADEM programs and activities. These allegations, filed formally with ECRCO as separate complaints against ADEM and/or voiced during interviews or provided as documentary evidence as part of this investigation, raise broader systemic issues regarding ADEM's methods of administering its solid waste permitting process in general, as well as its non-discrimination program. Accordingly, ECRCO will be contacting ADEM to discuss these issues and possible options for addressing them through the resolution of the pending complaints.

This letter sets forth ECRCO's disposition of EPA File No. 06R-03-R4. This letter is not a formal statement of ECRCO policy and should not be relied upon, cited, or construed as such. This letter and any findings herein do not affect ADEM's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulation at 40 C.F.R. Part 7, including §7.85, nor do they affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not addressed in this letter.

If you have any questions, please feel free to contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Ms. Marianne Engelman Lado
Ms. Leah Aden

Page 17

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office

Vickie Tellis
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 28, 2017

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 5874
Lance LeFleur, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

In Reply Refer to:

EPA File No. 06R-03-R4

Re: Closure of Administrative Complaint, EPA File No. 06R-03-R4

Dear Director LeFleur:

This letter is to notify you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving and closing, as of the date of this letter, the administrative complaint filed with EPA on December 8, 2003, against the Alabama Department of Environmental Management (ADEM). The complaint generally alleged that ADEM violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d et seq. (Title VI) and the EPA's nondiscrimination regulation found at 40 Code of Federal Regulations (C.F.R.) Part 7. With respect to the specific issues addressed in this case, EPA ECRCO finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation.

EPA ECRCO is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex, and age in programs or activities that receive federal financial assistance from the EPA. On September 7, 2005, EPA accepted for investigation two allegations raised in the December 2003 complaint.¹ On January 25, 2013, EPA issued a letter dismissing one of those allegations.² EPA's 2013 letter concluded that, with respect to the allegation that ADEM intentionally discriminated against the African American residents of the Ashurst Bar/Smith community during the public involvement process for the permitting of a modification to the Tallassee Waste Disposal Center, Inc. in 2003, there was insufficient evidence of non-compliance.

¹ Letter from Karen D. Higginbotham, Director, OCR to (b) (6) Privacy, Complainant, Acceptance of Administrative Complaint (September 7, 2005).

² Letter from Rafael DeLeon, Director, OCR to Lance LeFleur, Director, ADEM (January 25, 2013); Partial Dismissal of Title VI Administrative Complaint.

The remaining allegation (as originally accepted for investigation) was:

Whether ADEM's failure to require the Tallapoosa County Commission to properly use the siting factors listed in the EPA June 2003 Title VI Investigative Report (EPA File No. 28R-99-R4)³ in considering for approval the 2003 application to modify Permit #62-11 for the Tallassee Waste Disposal Center, Inc.,⁴ located in Tallassee, Tallapoosa County, Alabama, had a discriminatory effect on the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race.

With respect to this issue, as investigated, ECRCO finds that the record does not establish a prima facie case of discrimination based on disparate impact with respect to allegations set forth in this complaint regarding the 2003 permit modification. Accordingly, ECRCO finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation in regard to the 2003 permit modification at issue in this case and EPA File No. 06R-03-R4 is closed as of the date of this letter. As explained later in this letter, information gathered during the course of this investigation and additional pending investigations involving ADEM have raised issues not addressed by this letter. ECRCO will be contacting ADEM to discuss these issues and possible options for addressing them.

Clarification of Issue Investigated in This Case

EPA originally accepted for investigation the allegation that ADEM's failure to require the Tallapoosa County Commission to properly use the siting factors listed in the EPA June 2003 Title VI Investigative Report (EPA File No. 28R-99-R4)⁵ in the 2003 permit modification process for the Tallassee Waste Disposal Center, Inc., had a discriminatory effect on the predominantly African-American residents of the Ashurst Bar/Smith community. However, during the course of the investigation, ECRCO determined that whether ADEM properly considered the siting factors in its decision to approve the 2003 permit modifications is not germane to ECRCO's determination of whether there was an adverse disparate impact that resulted from ADEM's approval of the 2003 permit modification. Specifically, as discussed more fully below, there is insufficient evidence that the 2003 permit modifications themselves – whether or not they were considered in light of the six solid waste management planning criteria (i.e. the six "siting factors") – were sufficiently causally connected to the disparate adverse harms alleged by Complainants.⁶

³ Letter from Karen D. Higginbotham, Director, OCR to Luke Cole, Director, Center for Race Poverty and the Environment (CRPE) and James W. Warr, Director, ADEM; Re: EPA File No. 28R-99-R4 (July 1, 2003).

⁴ Tallassee Waste Disposal Center, Inc. is now known as Stone's Throw Landfill.

⁵ Letter from Karen D. Higginbotham, Director, OCR to Luke Cole, Director, Center for Race Poverty and the Environment (CRPE) and James W. Warr, Director, ADEM; Re: EPA File No. 28R-99-R4 (July 1, 2003).

⁶ Ultimately, Complainants' allegations of harm appear to be related to the initial permitting and siting of the Tallassee Waste Disposal Center, Inc. ADEM's decision to permit the Tallassee Waste Disposal Center, Inc. occurred in 2001, several years prior to the filing of this complaint.

The following provides additional context and background regarding the six “siting factors”⁷ listed in the EPA June 2003 Title VI Investigative Report. In response to a 1999 Title VI complaint alleging adverse and disparate impact violations by ADEM in connection with the issuance and modification of permits at four specific municipal solid waste landfills in Alabama (not including the Tallassee Waste Disposal Center, Inc.), EPA issued its legal and factual findings in a decision letter dated July 1, 2003, and accompanying June 2003 Investigative Report. EPA found no violation of Title VI with respect to disparate impact claims for each of the four landfills, as well as an intentional discrimination claim asserted with regard to the permitting of all municipal solid waste landfills in Alabama.

At the time of EPA’s 2003 investigation of EPA File No. 28R-99-R4, it was ADEM’s position that the “siting factor” assessments were the responsibility of local governments and that it could only deny a permit if the site was environmentally unsuitable from a technical perspective (and not for siting factor reasons). The 2003 Investigative Report and Decision Letter stated: “... EPA notes that the administration of ADEM’s Solid Waste Program may nevertheless lead to violations of EPA’s Title VI regulations in the future because the potential failure to consider safety or socio-economic impacts could lead to ADEM-permitted landfills that have an adverse disparate impact on a population protection by EPA’s Part 7 regulations.”⁸ EPA did not, however, determine that failure to ensure that such criteria were considered by ADEM or local governments was in and of itself a Title VI violation. Ultimately, a Title VI violation would arise if an ADEM-approved permit actually caused adverse and disproportionate impacts.

Consequently, our investigation of the allegations arising in this complaint focused on whether or not ADEM’s 2003 permit modification decision for the Tallassee Waste Disposal Center, Inc. resulted in an adverse and disparate impact to the predominantly African-American residents of the Ashurst Bar/Smith community.

⁷ Under the Alabama Code at § 22-27-47 and § 22-27-48, the state legislature specifically directs the requirements outlined relating to permit applications at the local host jurisdiction. ADEM has consistently taken a position that such responsibilities are outside their purview. Under ADEM Admin. Code r. §335-13-9-.06, local authorities must develop Solid Waste Management Plans that are consistent with the various outlined procedures, which are inclusive of the six criteria outlined under Alabama Code § 22-27-47(b)(1) and submit them to ADEM. The six criteria are as follows:

- a. The jurisdiction’s solid waste management needs as identified in its plan;
- b. The relationship of the proposed location or locations to planned or existing development, to major transportation arteries and to existing state primary and secondary roads;
- c. The relationship of the proposed location or locations to existing industries in the jurisdiction or state that generate large volumes of solid waste and to the areas projected by the state or local regional planning and development commission for development of industries that will generate solid waste;
- d. The costs and availability of public services, facilities and improvements which would be required to support a facility in this location and protect public health, safety and the environment;
- e. The potential impact a facility in the proposed location or locations would have on public health and safety, and the potential that such locations can be utilized in a manner so as to minimize the impact on public health and safety; and
- f. The social and economic impacts that a facility at the proposed location would have on the affected community, including changes in property values, community perception and other costs.

⁸ EPA June 2003 Title VI Investigative Report (EPA File No. 28R-99-R4, Yerkwood, 95-96, June 2003.)

In conducting the investigation, ECRCO gathered and reviewed all of the information relevant to the complaint. This information included the complaint submitted to ECRCO, ADEM's responses to ECRCO's acceptance of the complaint, and all other letters and emails ECRCO received from the complainant and recipient pertaining to the 2003 permit modification for the Tallassee Waste Disposal Center, Inc. ECRCO also considered information gathered through various emails from, and telephone interviews with, the Complainants and community members in 2016 and 2017.

Legal Standard

EPA's investigation was conducted under the authority of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation (40 C.F.R. Part 7) and consistent with EPA's Case Resolution Manual. EPA's regulation at 40 C.F.R. §7.35(b) states, in part, that "A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, or national origin."

The issue of whether ADEM's approval of the 2003 application to modify Permit #62-11 for the Tallassee Waste Disposal Center, Inc. had a discriminatory effect on the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race, was analyzed under a *disparate impact* or *discriminatory effects* standard.⁹

In a disparate impact case, EPA must determine whether the recipient used a facially neutral policy or practice that had a sufficiently adverse (harmful) and disproportionate effect based on race, color, or national origin. This is referred to as the *prima facie* case. To establish an adverse disparate impact, EPA must:

- (1) identify the specific policy or practice at issue;
- (2) establish adversity/harm;¹⁰
- (3) establish disparity;¹¹ and

⁹ *Guardians Ass'n. v. Civil Serv. Comm'n*, 463 U.S. 582, 593 (1983); *Alexander v. Choate*, 469 U.S. 287, 293 (1985). Many subsequent cases have also recognized the validity of Title VI disparate impact claims. See, e.g. *Villanueva v. Carere*, 85 F.3d 481 (10th Cir. 1996); *New York Urban League v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995); *Chicago v. Lindley*, 66 F.3d 819 (7th Cir. 1995); *David K. v. Lane*, 839 F.2d 1265 (7th Cir. 1988); *Gomez v. Illinois State Bd. Of Educ.*, 811 F.2d 1030 (7th Cir. 1987); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403 (11th Cir. 1985); *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984). In addition, by memorandum dated July 14, 1994, the Attorney General directed the Heads of Departments and Agencies to "ensure that the disparate impact provisions in your regulations are fully utilized so that all persons may enjoy equally the benefits of [f]ederally financed programs." Attorney General Memorandum on the use of the Disparate Impact Standard in Administrative Regulations under Title VI of the Civil Rights Act of 1964 (July 14, 1994) (<http://www.justice.gov/ag/attorney-general-july-14-1994-memorandum-use-disparate-impact-standard-administrative-regulations>).

¹⁰ Adversity exists if a fact specific inquiry determines that the nature, size, or likelihood of the impact is sufficient to make it an actionable harm.

¹¹ In analyzing disparity, EPA analyzes whether a disproportionate share of the adversity/harm is borne by individuals based on their race, color, national origin, age, disability or sex. A general measure of disparity compares the proportion of persons in the protected class who are adversely affected by the challenged policy or decision and the proportion of persons not in the protected class who are adversely affected. See *Tsombanidis v. W. Haven Fire Dep't*, 352 F.3d 565, 576-77 (2d Cir. 2003).

(4) establish causation.¹²

The focus here is on the consequences of the recipient's policies or decisions, rather than the recipient's intent.¹³ The neutral policy or decision at issue need not be limited to one that a recipient formalizes in writing, but also could be one that is understood as "standard operating procedure" by recipient's employees.¹⁴ Similarly, the neutral practice need not be affirmatively undertaken, but in some instances could be the failure to take action, or to adopt an important policy.¹⁵

If the evidence establishes a prima facie case of adverse disparate impact, as discussed above, EPA must then determine whether the recipient has articulated a "substantial legitimate justification" for the challenged policy or practice.¹⁶ "Substantial legitimate justification" in a disparate impact case is similar to the Title VII employment concept of "business necessity," which in that context requires a showing that the policy or practice in question is demonstrably related to a significant, legitimate employment goal.¹⁷ The analysis requires balancing recipients' interests in implementing their policies with the substantial public interest in preventing discrimination.

If a recipient shows a "substantial legitimate justification" for its policy or decision, EPA must also determine whether there are any comparably effective alternative practices that would result in less adverse impact. In other words, are there "less discriminatory alternatives?"¹⁸ Thus, even if a recipient demonstrates a "substantial legitimate justification," the challenged policy or decision will nevertheless violate federal civil rights laws if the evidence shows that "less discriminatory alternatives" exist.

Analysis

¹² See *N.Y.C. Envtl. Justice All. v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities").

¹³ *Lau v. Nichols*, 414 U.S. 563, at 568 (1974).

¹⁴ If as part of a recipient's permitting of a facility, a recipient makes a decision with respect to the siting of a facility, such decision may not intentionally discriminate or have a discriminatory effect on a protected population. EPA's regulation states, "A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart." 40 C.F.R. § 7.35(c).

¹⁵ See, e.g., *Maricopa Cty.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (disparate impact violation based on national origin properly alleged where recipient "failed to develop and implement policies and practices to ensure [limited English proficient] Latino inmates have equal access to jail services" and discriminatory conduct of detention officers was facilitated by "broad, unfettered discretion and lack of training and oversight" resulting in denial of access to important services).

¹⁶ *Georgia State Conf.*, 775 F.2d at 1417.

¹⁷ *Wards Cove Packing Inc. v. Antonio*, 490 U.S. 642, 659 (1989); *Griggs v. Duke Power Co.*, 401 U.S. 424, 433-36 (1971). The concept of "business necessity" does not transfer exactly to the Title VI context because "business necessity" does not cover the full scope of recipient practices that Title VI covers, which applies far more broadly to many types of public and non-profit entities. See *Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Communities Project*, 135 S. Ct. 2507, 2522-24 (2015) (recognizing the limitations on extension of the business necessity concept to Fair Housing Act complaints).

¹⁸ *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993).

The issue being investigated in the instant complaint is whether ADEM's approval of the 2003 modification to Permit #62-11 for the Tallassee Waste Disposal Center, Inc. had a discriminatory effect on the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race.

Consistent with the legal standard outlined above for determining whether a prima facie case is established, EPA looks to determine whether a causal connection exists between a recipient's facially neutral policy or practice and an adverse disparate impact.¹⁹ Specifically, in a case such as this one where the policy or practice relates to a permit modification, EPA generally looks at the modification at issue and the modification's effects. While permit modifications can trigger Title VI violations, there must be some causal connection between the permit modification actions that appear to be facially neutral and the alleged adverse (harmful) and disparate effects.²⁰ If EPA cannot establish that each of the prima facie elements has been met, then EPA does not have sufficient evidence to establish a prima facie case of adverse disparate impact and cannot determine that the recipient has engaged in discrimination.

To determine whether a disparate impact occurred as a result of ADEM's issuance of the 2003 permit modification, with or without consideration of the siting factors, ECRCO examined the proposed permit modification actions and whether they could have caused the alleged disproportionate harms. As discussed more specifically below, as to each of the alleged harms relating to the 2003 permit modifications, ECRCO finds insufficient evidence to establish a prima facie case of disparate impact discrimination.

October 2001 Permit (Permit #62-11)

In October 2001, ADEM granted Permit #62-11, for a Resource Conservation and Recovery Act (RCRA) Subtitle D²¹ municipal solid waste permit for the Tallassee Waste Disposal Center, Inc., an approximately 123.47-acre disposal area.²² Within the boundaries of the Tallassee Waste Disposal Center, Inc. there was a formerly operated, but closed sanitary landfill.

The 2003 Permit Modification

The permit modification considered and approved the following:²³

- Design and construction of cells 2A and 2B, an approximately 5.11-acre municipal solid waste (MSW) disposal area;

¹⁹ See *New York City Envtl. Justice Alliance v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (citing *Brown v. Coach Stores, Inc.*, 163 F.3d 706, 712 (2d Cir. 1998); *New York Urban League, Inc. v. New York*, 71 F.3d at 1036).

²⁰ See *New York City Envtl. Justice Alliance v. Giuliani*, 214 F.3d 65, 69 (2d Cir. 2000) (plaintiffs must "allege a causal connection between a facially neutral policy and a disproportionate and adverse impact on minorities").

²¹ 40 C.F.R. Part 258 (RCRA Subtitle D regulation for municipal solid waste landfill.)

²² ADEM, Public Hearing Transcript, August 26, 2003, at 11.

²³ ECE Letter to ADEM, Request for Major Modification, April 30, 2003. In the original ECE Letter to ADEM, Request for Major Modification, April 30, 2003, there had been a request to add an 80-acre parcel to the permitted area. This request was withdrawn by ECE in a Letter to ADEM, Revision to Major Modification Request, May 30, 2003, and therefore, the addition of the 80-acre parcel was not ultimately considered for approval by ADEM.

- Design and construction of an approximately 6.56-acre construction and demolition (C/D) materials landfill;
- Relocation of the facility's sedimentation pond; and
- Operational changes.²⁴

The types of waste accepted, service area, and daily accepted waste volumes and the landfill boundaries that were permitted in 2001, remained unchanged in the proposed and approved 2003 permit modification.²⁵

The Alleged Harms

The alleged harms that relate to the 2003 permit modification were as follows:²⁶

- **Environmental and Community Health Concerns**
 - Impact from methane exceedances for the entire first year after reopening and lack of notification;
 - Impact from proximity to natural gas line;
 - Impact to wetlands, natural springs, environmental balance in region;
 - Air pollution from landfill emissions into populated areas due to wind patterns;
 - Impact to hunting and wildlife from surface water contamination and impacts to foliage;
 - Increase in disease vectors;
 - Drinking water well contamination concerns;
 - Impact on the Tuscaloosa Aquifer;
 - Impact of sedimentation pond relocation and storm water runoff;
 - Impact on the Gleeden Branch and other streams that leave the area and eventually contribute to water sources of downstream municipalities
 - Impact of landfill on farmers' animals and food gardens;
- **Transportation and Safety Concerns**
 - Lack of an evacuation and decontamination plan;

²⁴ On June 4, 2003, ECE submitted a request to ADEM for operational changes as follows: 1) for an alternative design for the drainage layer that continued to meet the permeability standard and an equivalent hydraulic flow rate; 2) for leachate recirculation; and 3) for implementation for the use of alternative daily covers. ECE Letter to ADEM, Re: Comments on Draft Permit, June 4, 2003.

²⁵ ADEM, Public Hearing Transcript, August 26, 2003, at 11; ADEM, Public Hearing Notice, July 17, 2003.

²⁶ Letter from (b) (6) Privacy, to Karen D. Higginbotham, Director, OCR (September 3, 2003), includes letter from (b) (6) Privacy to James W. Warr, Director, ADEM (August 29, 2003) as attachment; Letter from (b) (6) Privacy, to Karen D. Higginbotham, Director, OCR (December 15, 2003), at 3. Many of the issues raised in the complaint were phrased in the form of questions to ADEM. ECRCO has grouped and listed these items as alleged harms relating to the issues investigated. Items remaining after the dismissal of allegation 1 and included in list are items 5-29, 33 on pages 1-3, 5 of the letter from (b) (6) Privacy to James W. Warr, Director, ADEM, August 29, 2003. In addition, ECRCO considered information gathered through various emails from, and telephone interviews with, the Complainants and community members in 2016 and 2017.

- Lack of emergency response equipment and infrastructure (ambulances, fire trucks, etc.);
 - Impact to church due to proximity of landfill;
 - Impacts resulting from traffic and roadway design;
 - Impacts to homes due to close setbacks of residences to roadway;
 - Impacts from landfill traffic coming from prohibited directions;
 - Large service area; and
 - Issues relating to line of sight, lack of signage, and traffic speed enforcement.
- **Non-Environmental Concerns Raised by Complainants**
 - Diminution of property value;
 - Displacement of landowners; and
 - Stigma of living near a landfill.

For purposes of analyzing whether there is a prima facie case of discrimination based on disparate impacts, ECRCO has grouped the alleged harms into the same topical categories utilized above.

1. Environmental and Community Health Concerns

- Methane Gas Exceedances and Lack of Notification:

Complainants raised concerns regarding “numerous non-compliance reports of high methane gas levels” at Tallassee Waste Disposal Center, Inc. since its reopening and the initial placement of waste in 2002 and also raised concern that “the community was not notified and to date there is not in place a mechanism to alert the community of such dangers.”²⁷ With respect to the concern regarding “notification,” ECRCO has found that current state²⁸ and federal²⁹ regulations

²⁷ Letter from (b) (6) Privacy, to Karen D. Higginbotham, Director, OCR (September 3, 2003), includes letter from (b) (6) Privacy to James W. Warr, Director, ADEM (August 29, 2003) at 3.

²⁸ Alabama state requirements outlined at ADEM Admin. Code r. §335-13-4-.16(3) are as follows: 3. If explosive gas levels exceeds the limits specified in this Rule, the permittee shall:

(i) Immediately take all necessary steps to ensure protection of human health and property and notify the Department;

(ii) Within 7 days of detection, place in the operating record of the facility the explosive gas levels detected and the immediate steps taken to protect human health and property;

(iii) Within 20 days of detection, submit to the Department for approval a remedial plan for the explosive gas releases. This plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall be implemented upon approval by the Department, but within 60 days of detection. Also within 60 days of detection, a copy of the plan shall be placed in the operating record of the facility and the Department notified that the plan has been implemented.

²⁹ Under RCRA, the requirements at 40 C.F.R. §258.23(c) are the following: (c) If methane gas levels exceeding the limits specified in paragraph (a) of this section are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the State Director;

(2) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

do not require public notification when or if a landfill detects an emission exceedance during the course of their quarterly monitoring. The permitted facility is required to notify the state regulatory office within a prescribed time period and take the necessary steps to protect human health and the environment.

With respect to the concern raised in the complaint regrading “reports of high methane gas levels,” ECRCO examined whether the high methane gas levels detected in 2002 were causally related to the 2003 permit modification actions. ECRCO confirmed that the landfill engineers reported that there was an increased production of methane gas due to a portion of the Tallassee Waste Disposal Center, Inc. having a tendency to hold water and maintain moisture.³⁰ This portion of the landfill had soils introduced to modify the side slopes and improve positive drainage resulting in both less saturated soils and methane gas generation. This portion of the landfill was closed prior to the 2003 permit modification.³¹ ECRCO determined that, although located within the property boundaries of the Tallassee Waste Disposal Center, Inc., this closed sanitary landfill was a separate and completely independent disposal unit. The Subtitle D municipal solid waste landfill related to the 2003 permit modification was just being designed for construction in 2003 and, at that time, would not have contributed to any increase in methane gas levels since waste disposal activities and methane gas generation had not begun. As such, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged harm of increased methane gas levels – exceedances as articulated in the complaint.

- Natural Gas Line:

Complainants raised concerns about the landfill’s overall proximity to a natural gas line. ECRCO confirmed that, based on the landfill’s engineering drawings, a 100-foot “power easement” bisects the landfill’s property.³² The actual existence of a natural gas line within the 100-foot easement was not confirmed by ECRCO’s investigation as the survey does not depict the description of the type of utility or the easement owner(s). Any gas line, as well as the land on which the gas line would be found, are within the control and purview of the appropriate utility company. The 100-foot easement existed before the 2003 permit modification; and, the modification did not impact the easement.³³ Accordingly, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged harm related to a natural gas line or the easement for that line.

- Wetlands:

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the State Director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

³⁰ ECE, Tallassee Waste Disposal Center, Inc. Explosive Gas Report Summary, Permit No. 62-11 Response Letter (October 15, 2002).

³¹ ECE, Tallassee Waste Disposal Center, Inc. Explosive Gas Report Summary, Permit No. 62-11 Response Letter (October 15, 2002).

³² ECE Permit Drawings for Modification of Sunflower Landfill Inc. Cell 2A. Cell 2B, C&D Cell (March 2003).

³³ ECE Permit Drawings for Modification of Sunflower Landfill Inc. Cell 2A. Cell 2B, C&D Cell (March 2003).

The complaint raised a concern about the alleged environmental harm to wetlands resulting from the relocation of the sedimentation pond under the 2003 permit modification. Under the 2003 permit modification, although wetlands were impacted, the facility proposed and the Department of the Army, Mobile District, Corps of Engineers (COE) approved, payment into a mitigation bank to develop relocated wetlands within the same watershed in order to address any impact on water quality that would result from the permitted construction activities.³⁴ Once the mitigation was approved, the COE issued a permit to the landfill to fill in the wetlands located within the permitted area.³⁵ In light of the approved wetlands mitigation and relocation, there is insufficient evidence in the record to conclude that there was adverse harm with respect to the wetlands³⁶

- Wind Blown Pollution:

Complainants assert harm due to wind patterns carrying pollution and landfill emissions into populated areas. While operation of the 2003 expansion area could potentially increase the landfill's overall emissions, ECRCO found that the facility has taken measures to monitor and address emissions. ECRCO found that the facility implemented quarterly landfill gas monitoring,³⁷ and installed an emissions control system in the closed sections of the MSW landfill.³⁸ The facility further extended the control system over time into the former sanitary landfill operation,³⁹ and into the closed C/D cells, and into portions of the active phase of the landfill. Therefore, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and alleged increased air pollution.

- Hunting:

Complainants alleged harms to the surface water and foliage used by the wildlife and impacts to hunting within the community due to the 2003 permit modification. However, ECRCO could not establish a prima facie case of disparate adverse harm with respect to this allegation. First, ECRCO could not find any information in the record with respect to the condition of the surface water and foliage used by wildlife prior to the 2003 permit modification. As such, ECRCO could not find that the record established a baseline upon which to measure potential impact to surface water and foliage used by wildlife which could have resulted from any of the 2003 permit modification actions. Therefore, ECRCO finds insufficient evidence in the record to

³⁴ ADEM Administrative Code Division 13 prohibits the disposal of solid wastes in wetlands. The relocation of wetlands requires approval from the U.S. Department of the Army, Mobile District, Corps of Engineers (COE) and the State of Alabama. 40 C.F.R. §258.12 (Wetlands); ADEM Admin. Code r. §335-13-4-.01(2)(c) Landfill Unit Siting Standards - Landfill units including buffer zones shall not be permissible in wetlands, beaches or dunes.

³⁵ ADEM Response to Comments, October 20, 2003, at 3.

³⁶ Section 404 of the Clean Water Act establishes a program to regulate the discharge of fill materials into the waters of the U.S. The program through permitting activities allows for restoration through compensatory mitigation. *See* 40 C.F.R. 230 Subpart J—Compensatory Mitigation for Losses of Aquatic Resources. There are three (3) options for compensatory mitigation to address restoration of the permitted activities. The operator (permittee) proposes which option they would like to employ for such activities. These options include the mitigation bank, fee program to government or non-profit, or the operator (permittee) undertakes the mitigation. Here, the permittee has selected the mitigation bank as their compensatory mitigation option.

³⁷ *See i.e.*, Environmental Consulting & Engineering, Inc. (ECE), March 24, 2005 Tallassee Waste Disposal Center, Inc. Explosive Gas Report Summary First Quarter 2005, Permit No. 62-11.

³⁸ ADEM Engineering Analysis, Stone's Throw Landfill LLC, Facility No. 205-0015 (April 13, 2010).

³⁹ ADEM Engineering Analysis, Stone's Throw Landfill LLC, Facility No. 205-0015 (April 13, 2010).

conclude that there was adverse harm with respect to the surface water and foliage used by wildlife and its impact on hunting.

- Disease Vectors:

Complainants raised a concern that the 2003 modification's approval of a switch from use of daily soil cover to use of an alternative daily cover material would increase exposure to rodents, insects, and other wildlife including wild dogs and the resulting potential for transmission of diseases. During a 2016 interview, Complainants stated that they had observed increases in vultures, wild dogs, deer and crows since the 2003 modification.⁴⁰

ECRCO found that alternative materials may be approved in lieu of daily soil cover if the operator shows that they are protective of human health and the environment⁴¹ and minimize and manage the impact from animals and other disease vectors.⁴² ECRCO found that, in this case, ADEM approved use of alternative cover materials on a daily basis, as well as the use of a soil cover at least once per week at the end of the operational work week.⁴³

ECRCO confirmed that prior to the 2003 permit modification, previous construction activities conducted within the ~500-acre site removed natural habitats, re-graded the site, and prepared the property for the landfill's development. ECRCO also confirmed that the 2003 permitting actions continued the site development/re-development -- specifically, the development of cells 2a and 2b, the C&D unit, and the associated sediment and erosion control units. ECRCO acknowledges that it is possible that these 2003 permit activities could have impacted animal population numbers, but, there is insufficient evidence in the record for ECRCO to conclude that the 2003 permit modification actions themselves resulted in sufficiently significant harm with regard to increases in the animal population. As such, ECRCO could not establish a causal link between the 2003 permit modification and any changes in animal population numbers.

- Drinking Water Wells:

Concerns were raised about pre-existing safety hazards related to drinking water, such as the presence of toluene, including in well water and naturally occurring springs, and how the continued development of the landfill could contribute to these safety hazards.

ECRCO found that prior to the permitting of the Tallassee Waste Disposal Center, Inc. Subtitle D municipal solid waste landfill in October 2001, a preliminary environmental investigation report and a hydrogeological evaluation were completed.⁴⁴ The report documented pre-existing

⁴⁰ February 10, 2016 Interview with Complainants.

⁴¹ 40 C.F.R. §258.21 (provisions related to alternative cover material requirements).

⁴² 40 C.F.R. §258.22 (provisions related to disease vectors).

⁴³ On June 4, 2003, ECE submitted a request to ADEM for operational changes as follows: 1) for an alternative design for the drainage layer that continued to meet the permeability standard and an equivalent hydraulic flow rate; 2) for leachate recirculation; and 3) for implementation for the use of alternative daily covers. ECE Letter to ADEM, Re: Comments on Draft Permit, June 4, 2003.

⁴⁴ Mid-South Testing Inc. Tallassee Waste Disposal Center Inc. Preliminary Environmental Assessment prepared for Whatley Drake LLC (August/September 2000) and Southern Environmental Resources, Inc. Tallassee Waste Disposal Center Inc. Hydrogeologic Evaluation (June 14, 2000).

impacts from metals and various pollutants to a local naturally occurring spring and residential drinking water wells located south, and southeast, respectively, from the landfill property. The consultants' recommendations from these assessments included the need to establish an alternative source of drinking and domestic water as well as utilization of a water purification system for two properties.⁴⁵ ADEM concurred with these recommendations.⁴⁶

With respect to whether the continued development of the landfill contributed to the pre-existing safety hazards, the composite liner and leachate collection system were designed to prevent leachate migration into the groundwater.⁴⁷ The groundwater monitoring system was designed to evaluate groundwater quality at the landfill property boundary.⁴⁸ Moreover, ECRCO found that the permanent and temporary drainage control features were designed to protect surface water quality.

ECRCO did not identify any evidence to suggest that the composite liner and leachate collection system, and the site's permanent and temporary drainage control features in the 2003 modification would contribute to pre-existing hazards. As a result, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged increased impact on drinking water.

- Tuscaloosa Aquifer:

Complainants raised a concern regarding impact to the Tuscaloosa Aquifer resulting from this permit modification. Impacts to water quality could occur from the land disturbing activities associated with the permit modification. However, the landfill addressed any potential impacts from the facility's drainage and discharges that could result from land disturbing activities through the landfill's construction of measures designed to be protective of human health and the environment – a composite liner and leachate collection system, and the site's permanent and temporary drainage control features that protect surface waters that feed local aquifers.⁴⁹ The groundwater monitoring system was designed to detect groundwater impact and evaluate groundwater quality at the landfill property boundary.⁵⁰

Complainants supplied evidence of a sediment erosion control feature that failed due to an extreme storm.⁵¹ ECRCO's investigation found that permanent and temporary sediment control features are designed to control runoff from routine storm events and not designed to manage high volume rain events rising to the level of an "Act of God." ECRCO did not identify any

⁴⁵ Furthermore, the consultants noted that a local water authority provided service to one property, but at the time of their report, this service had not been routed into the residence. *Id.*

⁴⁶ ADEM Memorandum, Review of Preliminary Environmental Investigation (January 4, 2001).

⁴⁷ ADEM Admin. Code r. §335-13-4-.18 (requirements relating to liners and leachate collection), 40 C.F.R. §258.40 (requirements relating to liners and leachate collection),

⁴⁸ ADEM Admin. Code r. §335-13-4-.14 and §335-13-4-.27 (requirements relating to groundwater monitoring systems), 40 C.F.R. §258.51 (requirements relating to groundwater monitoring systems).

⁴⁹ ADEM Admin. Code r. §335-13-4-.17 (requirements relating to drainage); §335-13-4-.18 (requirements relating to liners and leachate collection).

⁵⁰ ADEM Admin. Code r. §335-13-4-.14 and §335-13-4-.27 (requirements relating to groundwater monitoring systems), 40 C.F.R. §258.51 (requirements relating to groundwater monitoring systems).

⁵¹ Photographs provided by Complainants, March 4, 2016.

evidence to suggest that the composite liner and leachate collection system, the groundwater monitoring system, or the site's permanent and temporary drainage control features did not adequately address any potential impacts from routine storm events to the Tuscaloosa Aquifer. As a result, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged harm to the water quality of the Tuscaloosa Aquifer.

- Sedimentation Pond and Storm Water Runoff:

While not making an allegation of harm related to the movement of the sedimentation pond, the Complainants did express concern as to why the pond was being moved. Movement of the sedimentation pond facilitated the development of the proposed landfill cells.⁵² While the acts carried out under the 2003 permit modification could have contributed to runoff from the landfill, evidence shows that mitigating measures were put in place at the time to address these issues. The movement of the sedimentation pond was requested "to better collect and treat storm water runoff from the site."⁵³ ADEM reviewed the request and determined that the new sedimentation pond location adequately removed sediments from the storm water runoff prior to release onto adjacent properties or waters, and its relocation would have no adverse impact on quality of surface waters discharged from the site.⁵⁴ ECRCO did not identify any evidence to suggest that sediments were not adequately removed from the storm water runoff prior to release. Therefore, there is insufficient evidence to show a causal link between the 2003 permit modification, including the movement of the sedimentation pond, and alleged increased runoff.

- Gleeden Branch and Other Surface Water:

Complainants raised a concern regarding impacts resulting from the 2003 permit modification to Gleeden Branch and other surface waters that eventually contribute to water sources for downstream municipalities. Impacts to water quality could occur from the facility, including the land disturbing activities associated with permit modification; however, the facility's permanent and temporary drainage control features are designed to reduce the impact to surface waters.⁵⁵ ECRCO found that, at the time, the management of surface water discharges were addressed by the relocation of the sedimentation pond and other permanent and temporary drainage control features associated with the site's development. Therefore, ECRCO finds insufficient evidence in the record to conclude that there was adverse harm with respect to Gleeden Branch and other surface waters as alleged.

- Farming and Gardens:

A concern was raised "about the impact of the landfill on our farmers' animals and the gardens that people use for food."⁵⁶ A subsequent concern was conveyed by Complainants on behalf of

⁵² ECE Permit Drawings for Modification of Sunflower Landfill Inc. Cell 2A, Cell 2B, C&D Cell (March 2003).

⁵³ ADEM, Response to Comments, October 20, 2003, at 4.

⁵⁴ ADEM, Response to Comments, October 20, 2003, Response to Comment 10, page 4.

⁵⁵ ADEM Admin. Code r. §335-13-4-.17 (requirements relating to drainage); §335-13-4-.18 (requirements relating to liners and leachate collection).

⁵⁶ Letter from (b) (6) Privacy, to Karen D. Higginbotham, Director, OCR (September 3, 2003), includes letter from (b) (6) Privacy to James W. Warr, Director, ADEM (August 29, 2003) at 3.

an unnamed landowner about the harm to farming and gardening due to alleged contaminated soil and water from the landfill.⁵⁷

With regard to the 2003 modification, as mentioned above, the composite liner and leachate collection system were designed to prevent leachate migration into the groundwater.⁵⁸ The groundwater monitoring system was designed to detect groundwater impacts and evaluate groundwater quality at the landfill's property boundary.⁵⁹ Moreover, ECRCO found that the permanent and temporary drainage control features were designed to protect not only surface waters, but also adjoining properties from runoff.

ECRCO did not identify any evidence to suggest that the composite liner and leachate collection system, the groundwater monitoring system, or the site's permanent and temporary drainage control features did not adequately prevent leachate migration into the groundwater or failed to protect adjoining properties from runoff. As a result, there is insufficient evidence in the record to show a causal link between the 2003 permit modification and the alleged harm to farms and gardens on adjoining properties.

2. Transportation and Safety Concerns

Complainants raised concerns about the lack of an evacuation or decontamination plan for the community and inadequate emergency response infrastructure. Complainants also alleged impacts to residents and a local church relating to transportation, including those resulting from traffic and roadway design.

EPA's regulations implementing RCRA Subtitle C require evacuation and decontamination plans for communities at some hazardous waste disposal facilities.⁶⁰ The Tallassee Waste Disposal Center, Inc. receives non-hazardous solid waste, such as household garbage and construction and demolition materials which are regulated under RCRA Subtitle D, not Subtitle C. Landfill owners and operators of RCRA D facilities like the Tallassee Waste Disposal Center, Inc. must ensure that the concentration level of explosive gases including methane gas must not exceed the lower explosive limits of methane at the property boundary.⁶¹ Furthermore, ECRCO found that Tallassee Waste Disposal Center, Inc. has an explosive gas monitoring and reporting plan, conducts quarterly monitoring of landfill gas, and has installed a landfill gas control system.⁶²

The proposed 2003 permit modification did not impose any new or modified roadway, safety, emergency response, roadway setbacks, or other transportation conditions. The proposed permit modification did not alter the existing landfill service area or the truck route for landfill access. Furthermore, the proposed permit modification did not request an adjustment in the daily waste

⁵⁷ February 10, 2016 Interview with Complainants.

⁵⁸ ADEM Admin. Code r. §335-13-4-.18 (requirements relating to liners and leachate collection), 40 C.F.R. §258.40 (requirements relating to liners and leachate collection)

⁵⁹ ADEM Admin. Code r. §335-13-4-.14 and §335-13-4-.27 (requirements relating to groundwater monitoring systems), 40 C.F.R. §258.51 (requirements relating to groundwater monitoring systems).

⁶⁰ 40 C.F.R. Part 267, Subpart D, *Contingency Plan and Emergency Procedures*.

⁶¹ ADEM Admin. Code r. §335-13-4-.16; 40 C.F.R. Part 258.23.

⁶² *Explosive Gas Monitoring and Reporting Plan*, Appendix N of the Tallassee Waste Disposal Center Solid Waste Disposal Facility Permit Application, June 2000.

acceptance rates (which remained at 1,500 tons per day) or the types of waste approved for acceptance at the Tallassee Waste Disposal Center, Inc. ECRCO found that issues relating to the proximity to the church, roadway design, line of sight, signage, and traffic speed enforcement, and emergency infrastructure are not impacted by the permit modification. Instead, for example, the specific route used by trucks in proceeding to the landfill was addressed by the 1999 local host agreement between the operator and Tallapoosa County,⁶³ which was in effect at the time of the 2003 permit modification. As a result, there is insufficient evidence to show a causal link between the 2003 permit modification and the alleged harm resulting from traffic and roadway design.

3. Non Environmental Concerns Raised by Complainants

Complainants raised concerns related to diminution of property values, displacement of landowners, and stigma of living near a landfill, and that these were impacted by the 2003 permit modification actions. For its part, EPA has substantial discretion to determine the types of harms, on a case by case basis, that warrant investigatory resources and are sufficiently harmful to violate Title VI.⁶⁴ ECRCO determined that it would not investigate substantively the alleged harms of diminution of property values, displacement of landowners, and stigma of living near a landfill in this instance because, although the 2003 permit modification activities (*i.e.* the development of cells 2A and 2B, the C&D unit, and the associated sediment and erosion control units) could conceivably have resulted in diminution of property values, displacement of landowners, and contributed to stigma, there is insufficient evidence in the record to suggest that the permit modification actions themselves resulted in a sufficiently significant harm with regard to stigma, displacement of landowners and property values. Instead, as previously noted, Complainants' allegations of harm generally, and with respect to these identified concerns in particular, appear to be related to the initial permitting and siting of the Tallassee Waste Disposal Center in 2001, rather than to the 2003 permit modification at issue in this case.

Conclusion

For the reasons set forth above, the record does not establish a *prima facie* case of discrimination based on disparate impact with respect to allegations set forth in this complaint regarding the 2003 permit modification. Accordingly, ECRCO finds insufficient evidence to conclude that ADEM violated Title VI and EPA's nondiscrimination regulation in regard to the 2003 permit modification at issue in this case. In light of the findings set forth in this letter, this case is closed as of the date of this letter.

While there is insufficient evidence for finding a violation of EPA's nondiscrimination regulation relative to the specific issue raised in this case and the 2003 permit modification

⁶³ Tallapoosa County Commission. Local Host Agreement (November 15, 1999). This agreement specified a particular route that traffic was to take to the landfill. The application for the 2003 permit modification did not request changes to this route.

⁶⁴ See *Choate*, 469 U.S. at 293–94: “Title VI had delegated to the agencies in the first instance the complex determination of what sorts of disparate impact upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts.” See also *Alexander v. Sandoval*, 532 U.S. 275, 306 (2001) (Stevens, J., dissenting).

actions, ECRCO has continued to hear community concerns regarding alleged discrimination relating to environmental permitting actions in Alabama, including with respect to whether ADEM examines the decision-making processes of the local host governments and the regional planning authorities relative to permitting actions. In addition, ECRCO has received information and complaints with respect to ADEM's public participation program as well as ADEM's implementation of a foundational non-discrimination program that establishes appropriate procedural safeguards for addressing civil rights complaints and implementing policies and procedures to ensure access for persons with disabilities and limited-English proficiency to ADEM programs and activities. These allegations, filed formally with ECRCO as separate complaints against ADEM and/or voiced during interviews or provided as documentary evidence as part of this investigation, raise broader systemic issues regarding ADEM's methods of administering its solid waste permitting process in general, as well as its non-discrimination program. Accordingly, ECRCO will be contacting ADEM to discuss these issues and possible options for addressing them through the resolution of the pending complaints.

This letter sets forth ECRCO's disposition of EPA File No. 06R-03-R4. This letter is not a formal statement of ECRCO policy and should not be relied upon, cited, or construed as such. This letter and any findings herein do not affect ADEM's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulation at 40 C.F.R. Part 7, including §7.85, nor do they affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not addressed in this letter.

If you have any questions, please feel free to contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,



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